119-280

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. ~~259~~. 23

JAMES HAMILTON, PLAINTIFF IN ERROR,

vs.

THE VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED AUGUST 17, 1883.

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OCTOBER TERM, 1885.

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1 *Petition. Filed February 18th*, 1881.

To the Honorable R. W. Richardson, judge of the district court, presiding in and for the parish of Ouachita, State of Louisiana.

The petition of James Hamilton, a resident of the parish of Orleans, State of Louisiana, with respect, represents that the Vicksburg, Shreveport, and Pacific Railroad Company, a duly incorporated company, organized under the laws of Louisiana, of which Edward Richardson is president, & domiciled at Monroe, in the parish of Ouachita, State of Louisiana, is legally and justly indebted unto him in the sum of twelve thousand one hundred & twenty-five $\frac{36}{100}$ dollars in the following manner, to wit:

Your petitioner is the owner and captain of the steamboat Era No. 10, & he has been engaged in steamboating between New Orleans and Eason's Ferry, on Boeuf river, for a living, since 1866, and by his energy, promptness, attention to business, courtesy, & fairness, he had gained the good will & patronage of the merchants, planters, and other persons at Oak Ridge & and along the

2 said Boeuf river, to the exclusion of other steamboats. He avers that the steamboat Era No. 10 was in readiness, waiting at New Orleans for the opening of navigation of Boeuf river, in the fall of 1880; and when notified by his patrons that there was sufficient water for his boat, he went up said river with his steamboat as was his custom, intending to go to Eason's Ferry; but when he reached the railroad bridge across Boeuf river (which by law is required to be a drawbridge) on or about the 6th of November, 1880, he found the river illegally obstructed by an unlawful bridge placed across said river by the defendant for its own use without proper regard for the rights of others, and especially of your petitioner, & to the great damage and injury of your petitioner.

Your petitioner demanded of the agents of said R. R. Company the removal of the obstructions to the navigation of said river, so that his steamboat could pass & enable him to pursue his legitimate occupation of running his boat between Eason's Ferry & New Orleans, but the defendant refused and failed to remove said

3 *said* bridge or obstructions, & your petitioner was obliged to return to New Orleans with his steamboat without reaching its destination, & in consequence thereof he sustained a loss of five hundred and forty-six $\frac{46}{100}$ dollars, his earning being that much less than his necessary expenses on the trip. He avers that having received assurances from the agents of the company that the obstructions would be removed by the 10th of November, 1880, he again went up Bœuf river with his boat, and reached the bridge on or about the 14th of November, 1880, & he was prevented from going further by the said bridge of the said company, & he was again obliged to return to New Orleans without reaching his destination, & in consequence thereof he sustained a loss of six hundred & ninety-three $\frac{27}{100}$ dollars excess of expenses over receipts on said trip. Petitioner avers that but for the said obstructions placed in said river by the Vicksburg, Shreveport & Pacific Railroad Company he would have carried his steamboat to Eason's ferry on Bœuf river, & he would

have had a fair freight to New Orleans and back, & instead
4 of sustaining the losses above stated he would have netted at least one thousand dollars on the first trip & fifteen hundred & fifty dollars on the second trip. Your petitioner avers that he is a person with but limited means, & that the losses aforesaid so crippled him that he could not again take the risk of going up Bœuf river with his boat until he had been informed that the obstruction aforesaid had been removed, & he was obliged to tie up his boat at New Orleans, & keep her in readiness to resume her regular trips as soon as the said bridge & obstructions were removed, which did not happen until the end of December, 1880. He avers that he had to incur the further expenses, while laying up, for w-arfage and port charges of two hundred & ninety $\frac{83}{100}$ dollars. He further avers that he could and would have made three trips between the 14th of November, 1880, when he was prevented from passing the bridge on the 2nd trip, & the end of December, 1880, when the obstruction to the navigation of the river was removed, & he would have netted at least fifteen hundred and fifteen dollars per trip, as he averaged that much gain during the year preceeding, which was not so favorable for steamboatmen as 1880.

He avers further that in consequence of his inability to
5 carry his steamboat to Easton's Ferry on account of the said bridge across Boeuf river, placed there by the defendant, many of his former patrons, suspecting that petitioner was colluding with defendant to compel them to pay higher rates by being forced to ship and travel on the railroads, because petitioner did not forcibly remove the obstructions, expressed their disapproval of his conduct & their indignation publicly, & invited other steamboats to come in the trade, which previously had been monopolized by himself, & that he has been injured thereby in loss of business & in competition (for the trade will not support two steamboats) at least twenty-five hundred dollars.

Petitioner further avers that he has been further damaged to the extent of one thousand dollars for attorneys fees for professional advice & for conducting this suit.

Petitioner avers that all of said losses or injuries to him have been caused by the illegal, unauthorized, and unjust acts of the defendant in obstructing the navigation of Boeuf river (which is a vavigable stream) for its own profit & gain.

Petitioner avers amicable demand in vain, wherefore he prays that the said Shreveport & Pacific Railroad Company
6 be cited according to law, & that he have and recover judgment against said defendant for twelve thousand one hundred & twenty-five $\frac{56}{100}$ dollars, with legal interest & costs of suit. He further prays for general relief, &c.

JNO. T. LUDELING, *Att'y.*

SATURDAY, *March 12th*, 1881.

Court opened pursuant to adjournment.

Present: Hon'l. R. W. Richardson, judge; Austin Green, clerk; W. R. Lewis, d'y sheriff.

Continuance.

Minute, M'c'h 12, '81.

JAMES HAMILTON, *vs.* V. S. & P. R. R. Co. } 1655.

Continued by consent, with lease to take testimony generally in and out of the State.

Minute, April 4th, '81.

MONDAY, *April 4th*, 1881.

This being the day fixed for the regular jury term of the 5th judicial district court in and for the Parish of Ouachita, State of Louisiana, being the 1st Monday in April, 1881, and fourth day of said month, court was opened at the court house of said parish persuant to law.

Present: His Hon. R. W. Richardson, judge 5th district.

7 AUSTIN GREEN, *Clerk.*
J. E. McGUIRE, *Sheriff.*

Return Day Extended.

JAMES HAMILTON *vs.* V. S. & P. R. R. Co. } 1665.

On motion of pl'ff's counsel the return day of commissioners to take testimony in this case is extended to the third Monday of this month.

THURSDAY, *April 7th*, 1881.

Court opened pursuant to adjournment. Present: Hon'l R. W. Richardson, judge; Austin Green, clerk; J. E. McGuire, sheriff.

Answer Filed.

Minutes, Ap'l 7, 81.

JAMES HAMILTON *vs.* V. S. & P. R. R. Co. } 1655.

Answer & Demand in Reconvention. Filed Apr. 7th, 1881.

JAMES HAMILTON *vs.* V. S. & P. R. R. Co. } 1655.

The defendant, for answer to plaintiff's demands, pleads a general denial.

Further answering, they aver that the charter of the company confers upon it the right to bridge the Boeuf river for the
8 purpose of running trains over it, & imposes upon it the obligation to keep such bridge in repair and in such condition

as not to endanger the lives of its passengers and the property committed to its charge; that said bridge having become unsafe, and repairs becoming absolutely necessary, the officers of the V., S. & P. railroad made preparations to make such repairs in the shortest possible space of time, and at the least inconvenience to the public. For this purpose they caused to be framed and prepared at the shops of the company, in the city of Monroe, all the necessary timbers & material entering into the construction of said bridge, and selecting the period of the year when the said Boeuf river has for years past & is almost invariably unnavigable, & and when the said river was low and unnavigable commenced the cross timber of a new bridge, employing upon the said work as large a force of hands as could work on the same; that, in order to make the necessary repairs and constructions upon the said bridge, it became absolutely necessary to dismantle the draw and to erect temporary supports to the
9 bridge while the new timbers and new draw were being put into place; that, in consequence of heavy and almost unprecedented rains, the said river became suddenly very much swollen, thereby rendering useless the temporary supports placed under the said bridge, and rendering other works of a like character absolutely necessary.

That the company used all possible diligence to complete said bridge in as short a space of time as possible, employing thereon relays of hands, who worked night and day, but that in consequence of excessive and heavy rains the work was unavoidably & without fault or design of the company delayed longer than was expected when the work was commenced.

They specially aver that the plaintiff knew, when he left New Orleans with his boat on the first trip refered to in his petition, that he could not pass the bridge, which at that time necessarily and unavoidably obstructed the navigation of the river, and that he came merely for the purpose of laying the basis for this suit; that
10 defendant, through its vice-president and managing officers, requested him not to come, & offered, as a matter of compromise, and in order to avoid litigation or trouble in regard to it, to pay a reasonable sum for the use of his boat pending the obstruction of the river, but that plaintiff, taking advantage of what he conceived to be the misfortune of defendant, attempted to extort large sums, much beyond what he could reasonably expect to make with his boat at that season of the year.

Defendant avers that in consequence of the unprecedented rains & bad weather in the early part of the past autumn & winter the gathering of cotton was very backward. At the time of the obstruction of the river aforesaid there was little or no cotton ready for shipment above the bridge.

Defendant denies that any cotton was diverted to the railroad, or that plaintiff lost any freights or patronage by the act of this defendant, but avers that if he did, it resulted from no fault of defendant, but from the exercise of legal —.

Your respondent shows that this suit is frivolous, vexatious, and

without probable cause, and respondent, being obliged to em-
11 ploy counsel to defend it, has suffered damage in the sum of five hundred dollars, the compensation paid such counsel.

Wherefore defendant prays that plaintiff's demand be rejected, and that respondent have judgment against him in reconvention for the sum of five hundred dollars. Prays for costs and general relief, &c.

STUBBS & STILLMAN, *Att'ys.*
BOATNER & LIDDELL,
Of Counsel.

Am'd Ans. & Payer for Jury.

Minute, July 6th, '81.

WEDNESDAY, *July 6th*, 1881.

Court opened pursuant to adjournment.

Present: Hon'l R. W. Richardson, judge; Austin Green, clerk; J. E. McGuire, sheriff.

JAMES HAMILTON
vs. } 1655.
V., S. & P. R. R. Co.

Amended answer and prayer for jury filed.

Jury Granted. Continued.

Minute, July 7th, '81.

THURSDAY, *July 7th*, 1881.

Court opened pursuant to adjournment.

Present: Hon. R. W. Richardson, judge; Austin Green, clerk; S. N. Polk, d'y sh'ff.

JAMES HAMILTON
vs. } 1655.
V., S. & P. R. R. Co.

In this case the application for trial by jury is granted.
12 Case continued to take testimony, generally, in and out of the State.

Setting Cause.

Minute Oct. 4th, '81.

THURSDAY, *Oct. 4th*, 1881.

Court opened pursuant to adjournment.

Present: Hon. R. W. Richardson, judge; Austin Green, clerk; J. E. Hanna, d'y sh'ff.

JAMES HAMILTON
vs. } 1655.
V., S. & P. R. R. Co.

Case set for Friday next by consent.

Rule to Show Cause Filed.

Minute, Mar. 28th, 1882.

TUESDAY, *March 28th*, 1882.

Court opened pursuant to adjournment.

Present: Hon. R. W. Richardson, judge; Austin Green, clerk; W. G. Kennedy, d'y sh'ff.

JAS. HAMILTON
vs.
V., S. & P. R. R. Co. } 1655.

Motion and rule to show cause why the testimony of J W. Green taken by commission should not be used in evidence on the trial of this case filed.

Rule to Show Cause. Filed March 28th, 1882.

5 District Court for Ouachita Parish, Louisiana.

JAMES HAMILTON
vs.
V. S. & P. R. R. Co. } 1655.

To the hon. the Judge of said court:

13 The defendants in the above suit with respect shows that they have caused the testimony of J. W. Green, of Richmond county, Georgia, to be taken by commission from your hon. court before John Vaughn, justice of the peace, on the 28th of Sept., 1881, and that the commission and testimony have been returned & duly filed in this case by the clerk on the 4th of Oct., 1881.

The circumstances considered, petitioners pray that a rule be granted, returnable before the trial of this case, to compel the plaintiff to show cause, if any he has, why said testimony should not be rec'd & used in evidence upon the trial of this case.

BOATNER & LIDDELL, *Att'ys.*

Order.

Let a rule issue as prayed for.

Read and signed at chambers, this 28th March, 1882.

R. W. RICHARDSON, *Judge.*

Service of Rule.

Received in office Mar. 28th, 1882, & on the same day, month, & year I served a certified copy of this notice on J. T. Ludeling by handing said copy to him in person at his residence, about one mile from the court-house, in Ouachita parish, La.

J. E. HANNA, *D'y.*

Serving notice ..... 50c.
Mileage 20

70c.

14 *Ans. to Rule Filed.*

Minute M'ch 29th, '82.

WEDNESDAY, *March 29th*, 1882.

Court opened pursuant to adjournment.
Present: Hon'l R. W. Richardson, judge; Austin Green, clerk; W. G. Kennedy, d'y sh'ff.

JAMES HAMILTON
vs.
V., S. & P. R. R. Co. } 1655.

Answer to rule to show cause filed.

Answer to Rule. Filed M'c'h 29th, '82.

JAMES HAMILTON
vs.
V., S. & P. R. R. Co. } 1655.

In answer to the rule served by the defendant to show cause why the testimony of J. W. Green, taken under commission, shall not be used in evidence, the plaintiff answers and objects to the same for the reason that there is no proof of the capacity of the pretended officer, & no certificate under the seal of the State, as required by law.

Respectfully,
JNO. H. DINKGRAVE,
JNO. T. LUDELING, *Att'ys.*

Objections to Testimony Sustained

Minute M'ch 30, '82.

THURSDAY, *M'ch 30th*, 1882.

Court opened pursuant to adjournment.
Present: Hon'l R. W. Richardson, judge; Austin Green, clerk; W. &. Kennedy, d'y sh'ff.

15 JAMES HAMILTON
vs.
V., S. & P. R. R. Co. } 1655.

Answer to rule to show cause tried, and objections sustained and testimony of J. W. Green rejected.

Motion for Continuance Filed, Case Laid Over.

Minute Ap'l 3rd, '82.

MONDAY, *April 3rd*, 1882.

Court opened pursuant to adjournment.
Present: Hon'l. R. W. Richardson, judge; Austin Green, clerk; J. E. McGuire, sheriff.

JAMES HAMILTON
vs.
V., S. & P. R. R. Co. } 1655.

Motion and affidavit for continuance filed. Motion tried and case laid over and set for trial on Wednesday, 12th April, 1882.

Motion for Continuance. Filed Ap'l 3d, 1882.

State of Louisiana, 5th District Court, Ouachita Parish.

JAMES HAMILTON
vs.
V., S & P. R. R. Co. } 1655.

Defendant moves the court for the continuance of this cause to enable it to procure the testimony of John W. Green, as the same is material, important, and competent in behalf of defendant; that reasonable and proper diligence has been used to obtain the same,
16 and that it is through no fault of defendant that it has not been taken in a legal manner; that, through its counsel and agents, every plan has been resorted to which prudence and care could suggest to be prepared with this testimony for the trial of the cause, and no means left untried to insure the use of the testimony; that the defendant expects to prove by the testimony of this witness, Maj. John W. Green, that he was the general manager and vice-president of the railroad from a period prior to the first of January, 1880, and during the whole of that year, and until he unexpectedly resigned his place, in July, 1881, to take charge of the Georgia railroad as its general manager; that, up to the date of his leaving Ouachita for that purpose, he was residing in the town of Monroe; that, as such general manager of the defendant's railroad, he had charge of the property, its operation, management and repairs; that the witness is a civil engineer by profession; that, in order to operate the railroad, it was absolutely necessary to bridge the Boeuf river where the line crosses, a distance by land about twelve miles below the head of navi-
17 gation; that the Boeuf river bridge was built under the direction of witness in the year 1867 and had a sufficient draw therein to accommodate the navigation of the stream; that the bridge was supported on wooden cypress piling, and that in 1880 the bridge and its foundation was in such a condition from use and decay as absolutely required its complete repair and reconstruction, and that it was unsafe for use and to sustain the passage of trains across it without the greatest care, and the condition absolutely required that it should be renewed and thoroughly repaired or rebuilt in the fall of 1880; that in the spring of 1880 he, as general manager, entered into a written contract with J. H. Rembold, a faithful, competent, and able bridge-builder, for the repair and reconstruction of the Boeuff river bridge, and in view of the fact that the Boeuff river was, except in one instance, never known to be navigable in the fall of the year, in the months of October or No-

vember, and rarely before the first of January. The contractor was required to prepare the superstructure of his work, which he
18 did at Monroe, fitting, squaring, and numbering the same in the summer of 1880, and procuring his material for the substructure and foundation; had the same at the place ready as soon as the floods of the spring and summer subsided to commence the construction of the bridge, taking every precaution against the obstruction of the same; that as soon as navigation ceased in Boeuf river in the summer, waiting so as not to intefere therewith, the contractor proceeded with all possible dispatch to rebuild the bridge that was consistent with the continuous running of trains; that in consequence of the unprecedented August, September, & October rains the work was greatly and annoyingly retarded, and the river rose in October to such a height as to destroy the value of and submerge the work already done on the foundations, and that this rendered necessary a new system of piling for foundations and entailed additional expense and unexpected delay in the work; that while the work was in progress it was impossible in the very nature of things to operate the draw, and therefore the passage of the stream
19 by boats was impracticable; that in consequence of unusual fall rains in October it was evident there would be sufficient water for a boat in Boeuf river. Witness fearing that an effort might be made to take advantage of the company, and though there was little or no cotton prepared for the market, and a very small proportion of return freights being bro't into the country, repaired to New Orleans, and, though under no circumstances admitted any damages or any right to claim any, saw plaintiff, the only steamboat owner that navigated the stream, and informed him fully of the facts, with the express desire and purpose of avoiding complications; that the demands of plaintiff were exorbitant, and witness, Green, returned to his post of duty and redoubled his efforts to expedite the work, using extraordinary means and expense therefor, working at heavy expense a night force, and all the time, day and night, to make repairs; and that they were accomplished at the very earliest day possible, and after the exercise of all the energy and dispatch that the anxiety to complete the work and not
20 hinder navigation, & the free use of money, could secure; that every possible effort was employed to prevent the hinderance of navigation; and that if delays occurred, they were providential; and that no officer, agent, employer, or servant of the company could have prevented it; that the plaintiff suffered no real damages, because there was little or no cotton ready for shipment, which would have been sent by the river, & little or no return freights for the country adjacent that would have taken the river route, but that both the cotton & other freight shipments from the region of country usually supplied by Boeuf river above the bridge were generally less than any year before, since the road had been in operation; and that if any loss occurred to plaintiff it was from no fault of the railroad company, but the fault of plaintiff, who insisted upon going above simply because he could not and when he knew there was but little freight or cotton above the bridge or to

be carried there during the time the bridge was incomple. The defendant further shows that during the time the witness, Green,
21 resided in Monroe, and up to his sudden departure for his new field of labor, July, 1881, he expected to have his personal attendance, as he alone, of all other persons, was entirely familiar with the whole matter, and that as early thereafter as practicable defendant, through its counsel, procured the name of a suitable commissioner at Augusta, Georgia, the present domicil- of Green. A commission was so sent early in the month in September, 1881, to said commissioner; that for some cause the same was not executed by the commission named, but before a justice of the peace, who inadvertently returned the same without having his authority, &c., verified by the usual certificate of the executive of the State of Georgia; that this commission, so executed, was received by the clerk, Green, on the 4th day of October, 1881, and, on being filed & opened, defendant's counsel same day and at once discovered the formal defect above stated; and Mr. Liddell not being then present on account of sickness, when the case was called on the 2nd day of the October term for fixing by consent, being 4th day of October,
22 the formal defect in the authentication of Green's testimony was shown by one of defendant's counsel to the only other in attendance, to wit, by F. P. Stubbs to Chas. J. Boatner in the court-room, with the request that he see the opposing counsel, exhibit the formal defect, and ask its waiver; that said Boatner applied to Ludeling, counsel for plaintiff, who, as Boatner understood him, agreed with him to waive the objection of this formal defect; whereupon Mr. Boatner, having communicated the result to his co-counsel, the case was fixed by consent for trial, as shown by the minutes; and defendant's counsel, relying upon the good faith of the argument, took no rule to use Green's testimony; that Mr. Liddell was not present at that term of court after the first day thereof; had no knowledge of the agreement, and, during the absence of Stubbs, sick on the first & second days of the term of the court, simply discovered the formal defect in the evidence, filed the rule to use the same without any knowledge of the facts, and the same was filed in error by him of a knowledge of what had transpired; that defendant was surprised
23 when the plaintiff repudiated the agreement to use the testimony on the 30th ultimo, and the court sustained plaintiff's objection and ruled out the testimony. The court having passed on a similar case, adversely to the counsel of defendant, same day in another case, defendant, by its counsel, in accordance with the ruling of the court, withdrew the testimony and commission, and, with all possible dispatch, same evening sent the same to Atlanta for the purpose of having the certificate attached authenticating the justice of the peace, &c., in the manner required by law, by the Governor of the State of Georgia. Defendant further states that it will be able to obtain the return of this testimony in a very few days, in which event it will be prepared for trial.

That this application is not made for delay, but in the interest of justice and to obtain substantial justice, and that the testimony will be obtained before the next term of the court, and that these facts

cannot be established by any other witness known to affiants than John W. Green; that defendant president is absent from the State.

F. P. STUBBS, *of Counsel.*
BOATNER & LIDDELL,
Of Counsel.

24 *Affidavit to Motion for Continuance.*

F. P. Stubbs, Charles J. Boatner, and M. J. Liddell, being sworn, depose and say that the defendant is absent from the State; that the facts and allegations set forth in the foregoing application, in so far as they are within the personal knowledge of affiants severally, are true, and those stated that are not within their personal knowledge the- severally believe to be true. So help me God.

FRANK P. STUBBS.
CHAS. J. BOATNER.
M. J. LIDDELL.

Sworn to and subscribed before me this 3rd day of April, 1882.

AUSTIN GREEN,
Clerk, D. C.

Minutes April 12th, '82.

WEDNESDAY, *April 12th*, 1882.

Court opened pursuant to adjournment.

Present: Hon'l R. W. Richardson, judge; Austin Green, clerk; J. E. McGuire, sheriff.

JAMES HAMILTON
vs. } 1655.
V., S. & P. R. R. Co.

Case taken up for trial and the following jury was empannelled—sworn:

Silas Washington, Joshua Parsons, John Osborn, Wm. S. Morris, J. H. McCormick, Reuben Burton, Daniel Thomas, Charles
25 Pleasant, Lafayette Sims, Henry King, James M. Shaw.

The regular pannel having been exhausted, the court ordered that a sufficient number of talesmen be summoned to complete the panel, whereupon Gilbert Smith was summoned, and, together with the aforesaid eleven, was duly empanneled and sworn. The introduction of evidence continued until the hour of adjournment.

On Trial.

Minutes April 13th, 1882.

THURSDAY, *April 13th*, 1882.

Court opened persuant to adjournment.

Present: Hon'l R. W. Richardson, judge; Austin Green, clerk; J. E. Hanna, d'y sh'ff.

JAMES HAMILTON
vs.
V. S. & P. R. R. Co. } 1655.

Trial of case resumed, the jury all being present, and the introduction of evidence continued till the hour of adjournment.

Trial Continued.

Minute April 14th, '82.

FRIDAY, *April* 14*th*, 1882.

Court opened persuant to adjournment.
Present: Hon'l. R. W. Richardson, judge; Julius Ennemoser, d'y cl'k; R. W. Lewis, d'y sh'ff.

JAMES HAMILTON
vs.
V. S. & P. R. R. Co. } 1655.

26 Trial of case resumed, the jury all being present, and the introduction of evidence continued till the hour of adjournment.

Trial Continued.

Minute April 15th, '82.

SATURDAY, *April* 15*th*, 1882.

Court opened persuant to adjournment.
Present: Hon. R. W. Richardson, judge; Julius Ennemoser, clerk; W. R. Lewis, d'y sheriff.

JAMES HAMILTON
vs.
V. S. & P. R. R. Co. } 1655.

Trial of case resumed and the introduction of evidence continued till the hour of adjournment.

MONDAY, *April* 17*th*, 1882.

Court opened persuant to adjournment.
Present: Hon. R. W. Richardson, judge; Austin Green, clerk; J. E. McGuire, sheriff.

JAMES HAMILTON
vs.
V. S. & P. R. R. Co. } 1655.

Trial of the case resumed, the jury all being present, and trial concluded. The court appointed J. H. McCormick foreman of the jury. The jury having heard the evidence, the argument of counsel, and the charge of the court, retired to deliberate upon their verdict. The jury returned into court, and, through their foreman, presented the following verdict:

27 *Verdict.*

We, the jury, give the plaintiff, Hamilton, a verdict of one thousand dollars damages.

J. H. McCORMICK, *Foreman.*

Monroe, La., April 17th, 1882.

Note of Evidence. Filed April 17th, 1882.

THE STATE OF LOUISIANA, *Fifth District Court, Parish of Ouachita:*

JAMES HAMILTON
vs.
V. S. & P. R. R. Co. } No. 1655.

Before Hon. R. W. Richardson, judge, and a jury, April 12th, 1882.

Plaintiff offers in evidence the testimony of James Hamilton, J. P. Mohr, R. W. Faust, and John Pully, taken by commission. (Pp. 133, *et seq.*)

The depositions signed R. M. Faust are objected to by plaintiff on the ground that the commission, under which the depositions were taken, directed the commissioner to take the testimony of E. M. Faust, and he was, therefore, without authority to take the testimony of R. M. Faust.

Objection overruled by the court, to which ruling defendant excepts.

Col. T. O. BENTON, sworn for plaintiff, says:

28 I am an att'y at law, practising here; I should imagine that the fee for prosecuting a suit involving so large an amount as this would be conditional; that it is usually conditional upon the amount for which judgment is obtained, and that percentage, I think, is larger than the usual per cent. for collecting. Where fixed fees are charged, I should imagine ten per cent. on the amount claimed would not be excessive or unusual. I studied civil engineering while a young man at college; I have seen drawbridges built over navigable streams with the draw up and down the stream.

The drawbridge at Monroe was built with the draw up and down the stream so as to avoid interference with navigation. I have often passed Boeuf river where the R. R. drawbridge crosses it. It would depend on circumstances as to the length of time to build a draw at that place. With all the material at hand & a sufficient number of workmen, and the workmen all doing their part, it would require but a short time. It could be done in a few weeks. It depends on

29 circumstances, & it is impossible to estimate accurately how long it would take. It would depend especially upon the character of the draw to be made. Of course, a draw could be made which would require less time.

Cross-examined:

I say ten per cent. of the amount claimed would be a fair fee, because there is always litigation in a suit for damages. It is the

general rule that the fee is fixed in the amount of damages claimed. There are exceptions to that rule. If $100,000 were claimed, & it was a serious case, I should think ten per cent. of that amount would be a fair fee. In all serious cases the am't claimed is the basis upon which I would fix the fee & the responsibility to be assumed & the probable am't of litigation connected with it.

If the fee were fixed before commencing the suit, ten per cent. would be a fair fee. That would be a matter of contract; but, as I have stated, fees in such cases are usually conditional & dependant on the am't of judgment obtained. In case of suit for $10,000 damages, and the verdict of judgment were for defendant, I would hardly know how to fix the fee for att'y for plaintiff. I would
30 not bring such a suit without first fixing my fee.

The am't sued for in suits for damages is not always the basis upon which att'ys fees are fixed. The- are often dependent on the results.

Question. Is it not a fact, within your knowledge, that in suits for damages am'ts sued for are much greater than the parties expect to recover.

Objected to on the ground that it is irrelevant. Objection sustained & defendant excepts.

I should not think five hundred dollars for bringing & prosecuting this suit would be a good fee if it is a serious case, and if items making up the sum are for actual damages.

I don't know that I know of a case except one for damages in which the fee was fixed before the suit was brought—was fixed at ten per cent.; know of one such case. I don't remember the am't sued for in that case. The damage alleged was from tort, resulting in the death & loss of a slave, & the fee was predicated on the value of the slave.

That is the only case I know of in which the fee was fixed beforehand at ten per cent., and it is my experience that it is very rarely done.

31 My knowledge of civil engineering is derived from study at school and reading and observation since. It has been 32 years since I was at school. I have made very little practical application of that knowledge. I have taught others & had some little experience on railroads. I have had no practical experience in building a drawbridge with which I was immediately connected. The only wooden drawbridge with which I had anything to do was on a railroad. I do not know what character of foundation is required for a drawbridge. I do not claim to have any special knowledge about it on the subject of civil engineering. My answers-in-chief have been general as in regard to any other work, without any special knowledge about the subject. I do not know the number or am't of piling & the depth to which it is driven necessary for the building of such a drawbridge as the one across Boeuf river. I know nothing about the sub-strata of Boeuf river; I suppose it would take no longer to drive piling there than anywhere else. It

would depend on the character of the soil & the depth & cur-
32 rent of the water & the conveniences at hand; my informa-
tion on this subject is based on my knowledge of it as a man and not as a professional.

I can't tell that it is practicable to put in a draw at that place up & down the stream; I do not know much about the location.

Redirect:

When the fee in a damage suit is entirely conditional, it is usual to charge more than when it is otherwise.

ROB'T RAY, sworn for plaintiff, says:

For prosecuting a suit of this nature I think a fee of $1,000 would not be excessive, either to prosecute or defend it.

The draw in the bridge across Ouachita river, at Monroe, was built up and down the river on false piles. The river was not navigable at that time, but navigation was not obstructed while that bridge was being built.

Cross-examined:

The bridge at Monroe was built on piling driven above and below the pier, up and down the stream, & after the draw was completed that piling was taken away. The permanent work for
33 the support of the draw is built near the centre of the river, on the line of the railroad, on a round pier.

The pier was the centre of the support of the draw, & the wings of the draw were built on false work up and down the river, either way from the pier. There was no connection between the draw and the balance of the bridge during the construction. There was no railroad west of that in a condition to be operated. The line of the road terminated at the east bank of the river.

I was living here during the year 1880. The railroad from here to Delta carries the U. S. mail daily.

I know most of the parties whose signatures appear on the document which I hold in my hand. I don't know that I know their signatures. I know J. F. Madison, and the signature here looks like his genuine signature. Those parties live in the neighborhood of Oak Ridge, Morehouse parish. They are leading men of that place.

Cross-examined:

I do not recognize the signatures of the parties to that document, except Mr. Madison.

34 F. G. HUDSON, sworn for plaintiff, says:

The signatue of W. H. Duff I recognize to be his genuine signature. He lives at Alto, in Richland parish, and at the date of this letter was a merchant. I recognize the signature of H. F. Vickers to be his genuine signature. He also lives at Alto, in Richland parish, & is a considerable planter. I recognize the signature of Mr. G. S. Boyd. He lives at Gerard, in Richland p'h, & has been for some time the agent of the R. R. Co. there.

The signature of C. W. Eason to the two (2) documents, dated November 11th & Dec. 13, 1880, I have seen several times in correspondence with him, but I never saw him write and sign his name. While this is similar & looks like his signature to letters I have received from him, I am unable to attest to its genuineness, as to those about which I have already testified. From my knowledge of his signature, through correspondence with him, I think it is his signature.

On the document dated Nov. 10th, 1880, I recognize the following signatures appended thereto: J. Wm. Davis, Leroy E. Lee, J. E. McGowan, W. H. Hampton, & I think the signature of S. W.
35 Baird was also signed by Hampton.

There are other signatures to the document who I do not know; I know the following persons whose names are appended to this document: J. M. Sharp, a planter at Oak Ridge, in Morehouse; Jno. Jones, who, I think, was a book-keeper at Oak Ridge; Ph. Meyer & Baer, merchants at Oak Ridge; J. F. Madison and John F. Byrne I don't know. That includes all whose signatures I do not recognize. Those whose signatures I know I know the persons also. J. W. Davis at that time was a merchant & did a large business. S. H. Baird, represented by W. H. Hampton, was a merchant; I don't know the extent of his business. J. E. McGowan was a planter on a moderately small scale. C. W. Eason is a planter, living on the lake, who keeps the ferry, & who also kept a warehouse at the head of navigation on Boeuf river. When the river is up Eason's ferry is the shipping point for Oak Ridge, Prairie Mur Rouge, Lake Jefferson, & all that country up there. I know the signature of W. S. Jordan on postal card dated Oct. 5, addressed to Capt. James Hamilton, to be genuine.

36 Cross-examined:

I live at Rayville, in Richland P'h, not quite three miles from the R. R. bridge over Boeuf river. I am district att'y of the 5th district. I have lived there since the 1st of May, '72. I was at home in the fall and part of the summer of 1880. In the summer of 1880 I was in Texas about two months. I returned from Texas, I think, about the middle of August. I was passing along the railroad across Boeuf river frequently. I hunt out there a good deal. The fall of 1880 was a very wet season. I remember two weeks while court was in session in Ouachita when the weather was tolerably favorable, but I don't remember any other time during the fall that it was not raining all the time.

I think those excessive rains commenced early in the fall of 1880. I know it was raining when I came here to attend court, first Monday of Oct., 1880. I remember about two weeks of moderately fair weather while the grand jury were in session; maybe not so long as two weeks, & they complained a good deal about being
37 kept in attendance at court while the planting business required them at home.

Shortly before they adjourned it commenced raining again, & I am not able to say when it did stop raining again. There was great damage to crops by rain everywhere.

I remember the hardest rain I ever saw was in Marshall, Texas, in Sept., & it never stopped raining until August. It rained here almost continuously during the month of Sept., 1880; very hard rains. There had not been at that time, any weather in which cotton could be picked—not to any extent.

The effects of those rains of Boeufs river was to make it navigable. It was navigable in Sept., I think. It requires considerable rain to make Boeuf river navigable in Sept., or even in October or November, and constant rains to keep it so.

From Gerard or Rayville it is called 12 or 14 miles to Point Jefferson. Point Jefferson is the head of navigation on Boeuf river, properly speaking. Point Jefferson, I think, is in Richland parish.

From Point Jefferson to Eason's Ferry it is about six miles by
38 land—maybe more or less—to the best of my knowledge. I have not traveled it by land. That is the extreme head of navigation of Boeuf river & its tributaries, to all intents and purposes.

Eason's Ferry is across Lake Lafourche, which is the line between Morehouse & Richland p'h's. Eason's warehouse is in Morehouse parish. I observed the operations in the building & repairing of the Boeuf river bridge in 1880.

I know Mr. Rainbolt, who had charge of the constructing of the bridge; have frequently talked with him about the work & also with Major Greene & other officers of the R. R. Co. I don't know what number of men were at work on the bridge. (Ordered to be stricken out; see page 44.) But know they had a force there at work night and day for some time.

I rec'd a communication from the citizens of Oak Ridge addressed to me as dist. att'y of this district, complaining that this obstruction across Boeuf river was a violation of the law, and urging me to take legal steps to prosecute the guilty parties whoever they were. All

the attention I ever paid to the bridge or its construction was
39 called forth by that petition. I talked with Mr. Rainbolt; went to the bridge and talked with him on the bridge about it. I talked with Major Green, the general manager of the R. R., about it, & I talked with the road master, Col. Preston, & other R. R. officials, besides citizens in the community.

From assurances received from these sources & what I could see by my own observation, to wit, the working of a night and day force, I made no effort to prosecute them.

I took no action in the premises. I replied to the petitioners that I refused to do it.

Question. Did you or not ascertain, by the investigations you referred to, that the bridge contractor & the R. R. Co. were using every possible effort to complete the bridge as soon as possible?

Objected to on the ground that it calls for the opinion of the witness. Objection sustained, to which defendant excepts.

I made this investigation the latter part of October. I received

the communication shortly before the grand jury met in Rich-
40 land, first Monday in November. Mr. Rainbolt & I did go around and examine the bridge minutely. He stood on the bridge and pointed out the different parts of the work & explained it to me. I did not understand his explanation. Mr. Rainbolt pointed out to me the difficulties he had had to encounter and the plans he had adopted to overcome them. Knowing nothing about bridge building I did not understand the correct extent of his obstructions. He called my attention to one substructure that had to be abandoned and thrown away. I had several conversations with him about the bridge. I went out there at the request of Major Green and took my gun along and went hunting. I know a cause of my own knowledge that would delay the construction of that bridge. The river was very high. I am not able to say when the construction of the bridge was commenced. I know the river was navigable in Sept. and Oct., which is something very unusual and something that I never knew before [or] since I have been in the country. It may have occurred, but if so I do not recollect it.
41 As a general thing all the cotton shipped from Prairie Merouge, Oak Ridge, Gum Ridge, Prairie Jefferson, and all that country is shipped at Eason's Ferry when the river is navigable. Ordinarily it is about ten or eleven miles from Prairie Merouge post office to Point Pleasant. It is about eighteen miles from the stores on Prairie Merouge to Eason's Ferry. From Prairie Merouge to P't Pleasant there is three miles of swamp road that is very bad, especially in wet weather, besides a hill I reckon a hundred feet high in going from Prairie Merouge to Eason's Ferry. There is no ferry to cross. I have never known Mr. Turpin to ship a bale of cotton via Eason's Ferry. I can't say possitively as to any particular man in that community. I only have a general idea as to how cotton is shipped and why it is so shipped.

Redirect:

Boeuf river runs rather in a southerly direction. At Point Jeffer-
son Lake Lafourche makes out from Boeuf river, and running
42 in a S. W. direction about six miles by land from its source is Eason's Ferry.

Point Jefferson is the head of navigation on Boeuf river, but on reaching that point there is a tributary lake, Lafourche, which is navigable as far as Eason's Ferry, and Eason's Ferry is the head of navigation for packets plying Boeuf river. Formerly a levee was built across the mouth of the lake to prevent the waters of the river from running into the lake. By river I expect Point Jefferson is a hundred & forty miles above the R. R. bridge. It may be less. It generally takes 12 or 15 hours to run it. The banks of the Boeuf above the bridge are inhabitable, but not inhabited as thickly as the Ouachita river. In August and in the fall of 1880 there was an obstruction in the Boeuf river where the railroad crosses the river. I do not know when that work on the bridge was begun there, but I know they were working on it in Aug., '80, and in the fall of '80, which obstructed the river, and boats could not pass it.

I first observed the obstruction about the middle of August.
43 Before that I had been to Texas, since the last of June.

The obstruction across the river was the building of a bridge, substructure piling, and a structure to stand on and to keep the machinery on, which was sufficient to keep any steamboat from going up the river.

While this structure was there the train continued to run on the old bridge, which was intact. The new bridge was built just under the old one, and when completed the old bridge was removed section by section.

While in this condition the draw could not be used; when I went away in June they had prepared and painted all the timbers here near the depot in Monroe.

If they were there working at the river I did not see them. I passed there several times.

I saw a great many timbers prepared here, but I don't know that they were all then prepared.

I don't know when this obstruction was removed; when I
44 concluded not to prosecute them I paid no more attention to it.

It was not removed in November when the grand jury met. I do not think there were exceeding 35 or 40 men at work on the bridge; maybe not so many.

I saw those men there the last of October or first of November.

I saw men there at work before that time.

I only saw them while passing along the railroad. I did not observe how many men I saw before that. I was informed by Mr. Rainbolt and others that they were working on the bridge day and night.

(It is ordered by the court that the statement by the witness that the hands were working on the bridge day and night be stricken out.)

Mr. Rainbolt stood upon the bridge and we walked from one part of the bridge to the other, and he pointed out the different parts of the work and would say, You see what these hands are doing and what is necessary to be done.

(Plaintiff moves to strike out the testimony of this witness
45 where he states that Rainbolt pointed out the work as indicated by the above answer, on the ground that it is hearsay, which was overruled by the court, and to which pl'ff excepts.)

I presented the matter mentioned in the petition from citizens to me to the grand jury.

I know on the 1st Monday in May, 1880, Judge Richardson and myself and some other members of the bar went out to Rayville, and went as far as Gordon's on the engine, and then took a hand-car, and then a skiff about three or four miles, and then a hand-car again to Rayville. Water had not all gone out of the swamp entirely. The water was falling rapidly, though, at that time, and in two or three weeks after that I came into Monroe to supreme court, in June.

Boeuf river was then navigable. We generally have an overflow out there, and Boeuf river usually goes down to low water in May, June, or July. I have known the river to be navigable nearly all the year.

46 I am not able to say whether Boeuf river was navigable the 15th of June, '80, or not. I only noticed it casually in passing on the train. If the timber and all the material were ready, and a sufficient number of hands employed, I should think that bridge might be built in two weeks or two days. I heard the Era No. 10 at the river in the latter part of October and November, '80. I know she could not have passed there.

Recross-examination:

I have no idea of how many men could be utilized in that work; there is a number which, when passed, the rest are in the way, even in a law case.

Pl't'ff offers in evidence: Postal card dated Oct. 5th, addressed to Capt. Jas. Hamilton, and signed B. L. Jordan (p. 153); letter dated Dec. 6th, '80, addressed to Capt. Jas. Hamilton, signed by H. F. Vickers (p. 153); letter dated 14th Dec. '80, addressed to Capt. Jas. Hamilton, signed W. H. Duff; letter dated Oak Ridge, Nov. 10th, '80, addressed to Capt. Jas. Hamilton, signed J. Wm. Davis, Meyer & Baer, and Jno. Jones, J. L. Madison, Leroy E. Lee, J. E. Mc-

47 Gowan, John F. Byrne, G. W. Baird, W. H. Hampton, J. M. Sharp, J. Wm. Davis; letter dated Eason's Ferry, Dec. 13th, 1880, addressed to Capt. James Hamilton, signed C. W. Eason (p. 157).

Plaintiff offers the testimony of H. F. Vickers & C. P. Balfour, filed 9th April, 1881, taken by commission. (Pp. 165 *et seq.*)

(Pl'ff closes.)

Defendant's Testimony.

Ben Myrick, duly sworn for defendant, says:

I reside in the 3rd ward, Richland P'h, near Girard station. I am a planter; my farm is located on the bank of Boeuf river, 3 miles south of the R. R. I have been there since '63. I have been acquainted with the Boeuf river country since the latter part of '63. It is seven miles by land from where the R. R. crosses Boeuf river to Eason's Ferry; it is about 15 miles by land the way the road runs from where the R. R. crosses Boeuf river to the head of navigation on that river; it is at Point Jefferson; from the point of crossing to

48 the mouth of Boeuf river by land, it is about 75 miles. The mouth of Boeuf river, where it empties into the Ouachita, is about 12 miles above Harrisonburg; don't know in what parish; it passes through Morehouse, Richland, Franklin, Caldwell, & another parish—Catahoula, I think. From the head of navigation to its mouth Boeuf river is a navigable stream 2 or 3 months in the year, except when there are overflows. Navigation in Boeuf river generally opens in the latter part of December; it will average tha. since I have been there. In 1880 navigation opened earlier; i.

opened about the 1st of Nov.; it was an extraordinary season; the river came up sooner; it would come up a few days & then would fall again. There was high water in 1880. I think the boats stopped running in the latter part of May, 1880; there was no business for them. I think there was plenty of water for them to run when they stopped doing business that year, according to my recollection. I dis-remember how long after June, 1880, there was water for the boats to run; I know when the water went down; it went down very fast
49 and became very low. The rains commenced in the month of August, 1880, and it rained during August, Sept., Oct., Nov., Dec., '80, and Jan'y & Feb'y, and continued to rain until the drouth set in. I hardly know when it quit. There were continual showers during that year. I know the river was past fording during a good deal of that time. I do not know that it was navigable all of the time. These continued rains had the effect that we could not pick the cotton until very late, and the planters were very backward in getting out their cotton. By the middle of November, 1880, I had not picked more than one-sixth of my own crop of cotton. Ordinarily, I ought to have had picked at least one-half of my crop by that time. The reason I could not pick my crop that season was on ac. of the incessant rain. The same thing was generally the cause throughout the country. I am acquainted with the plantations and farms generally through that country. I had personal observation of some few of my neighbors, and portions of Morehouse parish, through which I passed on my way from Ashley county,
50 Ark., and found the same condition of things. The cotton grew very large, and was very late in opening. I think about one-sixth of the crop throughout that section of country had been picked about that time. The crop had been gathered between showers and placed in cotton-pens, and could not be moved. I lost all my seed because it got hot. I know I lost all my first seed. In many instances it could not be hauled out of the field to the gin-houses owing to the rains. It was the effect of the showers of rain on the cotton and on the fields, causing the roads to be very miry and muddy, preventing it from being hauled. The cotton was in such condition that it could not be ginned. We had to shake it out and dry it the best we could, because there was no sunshine. A great deal of cotton was rotten, so that we could not run it through the gin. I estimate that I lost about 50 bales cotton of my crop by not being picked. I packed one hundred and seventy-two bales that year, and on about one hundred bales of my cotton I realized from twelve to twenty doll's per bale; it was such poor stuff. Mine was not an exceptional case, in that country it was general. I think the Era, No. 10, came up on her first trip that year about the 8th or 10th of Nov.

51 The public roads at that time thoughout that country were very bad; they never were impassable; we managed to haul over them. I have been through the country north of the R. R. to the head of navigation of Boeuf river; know the plantations, and am well acquainted with it. When the river is navigable any length of time the Era No. 10 & other boats make regular trips from the

middle of December to the close of the season. We had other boats there before the Era No. 10. Delahouseaye had a boat there in 1873, several years before the Era No. 10. The shipments of freight control the boats, besides the stop of water. Generally boats make ten-day trips, but I have known boats to lay over in New Orleans for twenty days or a month each way waiting for freight.

Sufficiency of business is the principal consideration that governs boats in their movements. On the 1st trip of the season of the Era No. 10 we wanted the boat to lay over, because we were anxious to ship cotton, but could not gin it, because we could not get it to the gin-house. The same thing was the case on the second trip.

52 I was on the Era No. 10 when she came up the first time. I was on her when she came up the second time. I shipped a few bales of cotton on her each time. I disremember whether she had any freight for above the R. R. on her first trip. If any, she had very little. The reason was that the merchants and planters of Oak Ridge and P't Jefferson and surrounding country had laid in their supplies of bagging and ties in the spring & summer for fear of yellow fever, and they were stored at Gerard & Rayville, and there was nothing for the Era to bring. I don't think that Hamilton, pl'ff, lost anything by not being able to go above the R. R. in November, because if he had been able to go above there he would have been compelled to make the trip, and there was nothing for him to bring. On the contrary, I think he made money by not being able to go.

The season of 1879 & 1881 were entirely different from 1880 for making and moving cotton. It was as different as black and white. There was no comparison between these years. 1879 was a favorable year for making & gatering a cotton crop. 1881 was a favorable year for gathering, but not a favorable season for making a cotton crop.

The first bridge across Boeuf river had a draw made in fashion of
53 gate swinging to one side; this was in 1861 or '62. That bridge was replaced by a new drawbridge similar to the one now across that stream, and this was built during the season of 1862 or 1863; it did not interfere with navigation then. The same false work and the same piers were used in the construction of that bridge that were used in the construction of the present bridge, and did not interfere with navigation then. I passed over the road twice a day then, being conductor. The second bridge was burned by the Confederate authorities during the war. The bridge that was replaced by the one built in 1880 was built in the winter of '66 or the spring of 1867. I am not certain about the date. It was a drawbridge similar to the one there now. The condition of the old bridge showed a slide in the foundation on the east side, and rendered a new foundation for the present structure necessary. I have had frequent opportunities of seeing that bridge almost weekly during the past ten years. I passed over it either on foot or in the cars going to the east side, our court-house being over there. I thought
54 it was in a very cranky fix before they put in the new bridge. From my knowledge and observation it was highly necessary at that time, in 1880, to put in a new bridge for the safety of the

trains and passengers. The mails were carried daily each way by the R. R. to my certain knowledge. The Government had a mail agent on each train. There are no mails carried by the steamer up and down Boeuf river that I know of; they have no contracts. Ordinarily, when there is no overflow, there is a passenger train each way, one east and the other west, over the road daily. Don't know that any one would go down on a Boeuf river boat unless they were compelled to. I don't know of any comparison between the travel by R. R. and by boat on Boeuf river when both routes are open.

The traffic by steamer is inconsiderable with that by railroad for the reason that it is so late when navigation opens that ¾ of all the cotton and freights are shipped by R. R. before navigation opens. In fact I know that all the early cotton as far as Prairie Merouge & Bayou Bartholomew is shipped by R. R. I know where
55 H. F. Vickers lives. He lives at Alto Richland Ph., about 8 miles south of Girard. He is a farmer down there. W. H. Duff lives at Alto. Berry Duff lives at Alto, I think. Newt. Pitts' farm is on the west bank of Boeuf river, below Red Mouth, about 18 miles by land below the bridge.

I know of J. H. Rainbolt. He is a bridge-builder by profession. He seems to understand his business well, from the jobs he has turned out. I do not know the exact time when he commenced work on the bridge, the superstructure being framed at Monroe. I think they commenced work under Mr. Rainbolt out there the latter part of July or the first part of August. Boeuf river is usually too low for navigation, in my experience, as a general rule, during the latter part of July—during August, Sept., Oct., and November, and until late in December. I saw Mr. Rainbolt from time to time at work nearly every day. He was at Girard and about the bridge because it rained nearly every day. He was retarded in his
56 work because the water was too high for work on his substructure, preventing him from placing his undersills & driving his piling, the water being just too high. Mr. Rainbolt himself was in charge of the work. He had a foreman. I do not know the exact number of men he had there. He worked as many men as could work on the job both night & day & Sunday. There was no interruption of the running of trains during the time this work was being done.

The trains could not have been run during the rebuilding of the draw without obstructing navigation. Major Green was the engineer in charge of the road at the time and Preston was roadmaster.

Cross-examined:

The trains could have been run by having a locomotive on each side of the river and transferring passengers & mail & freight across Boeuf river on the superstructure. Fifteen or eighteen men could have been used, at most, driving piles. The work was confined to a very small space; only a few men could have been engaged at one time on the work. The piling or foundation, I suppose, was confined to twenty-five feet square. The solid foundation was piling, capped and mortised. The substructure proper for the foundation

was confined within that space. There was other work out-
57 side of that. The space within which the main work of the substructure *was* done was twenty-five feet square, more or less.

I do not know how many piles were driven in that space, as I have never counted them. I do not know how many piles can be driven in a day, never having been engaged in that work. The whole length of the draw, I should guess, is about 180 feet. There are abutments on each side of the draw.

I am not a mechanic. I am not a railroad bridge builder.

I think I have seen twenty men there at work at one time. I counted that many. I do not know how many were mechanics. I suppose they were. I know they worked at night, because I saw them go there and saw them there. I think they worked at night during the entire time they were at work there. I know they worked at night, because I saw them go there every day, and knew generally that they were at work. I came here at the instance of def'ts to testify in this case. I have paid my own expenses so far. I made no contract relative to any expenses. I came over by hand-car & skiffs brought over by d'f'ts. I think they commenced work
58 the latter part of July or first part of August taking down the old bridge & putting down the substructure. The slide on the east bank of the river had occurred a year or two before the building of the new bridge. The decay of the old bridge had been gradual for some time, & it had become necessary to replace the same by a new structure. If the work had been commenced in June, and the water had been low enough, the work could have been finished in time. In 1880 the water commenced to fall the last of May or June. I know that more than once in 20 years water has been high in Boeuf river in the fall. It happens occasionally, but it is very rare. I mean that at first in the fall of 1880 we waited for some time to see if it would not stop raining, and finally we made up our minds to pick anyhow. A few bolls opened at the bottom as early as usual. There was a large crop of cotton made, but it was very trashy. In 1879 I made 140 bales. In 1880, made 175, and 50 bales I did not pick. In 1880 I suppose I shipped 8 or 10 bales by rail. I disremember how many bales. I got all my up freight by rail. I think the Era made six or seven hundred dollars by not going above
59 the R. R.; that she would have sunk; that is my opinion. By the 20 or last of December about one-half of the crop of cotton had been gathered; by the 20th of Dec. I think it was about the last of March, '81, that people got through gathering & ginning cotton. The bulk of the crop had not been gathered by December. About the middle of Dec'r we were about half done gathering cotton, taking in the wastage, &c. The bulk of the cotton that was gathered was not shipped by the middle of Dec. About one-half of my crop was ginned by the latter part of Dec'r.

It rained pretty generally from middle of August until the latter part of Dec'r. These rains made the roads through the country worse for hauling. The ground was mushy & soft. The draw of the bridge over Boeuf river, R. R. bridge, is built on the same princip*al*

of the bridge at Monroe, & the draw turns up and down the river so as to let boats pass. If they had built that draw up and down the river it would not have interfered with navigation of the river.

I knew the Era No. 10 had no contract for carrying the
60 mails by being familiar with the officers of the boat; by being on the boat and hearing it discussed & stated on the boat that she was prohibited by law from carrying mails. They refuse to carry mail; will not carry a letter. I know they have no contract for carrying mails, because they told me on the boat that they did not have a contract. The captain so stated. I have no contracts under the railroad whatever. I have had none.

M. N. Coe, sworn for def't, says:

I know J. H. Rainbolt; he is an architect, bridge builder, and has been road master on the V., S. & P. R. R. My signature as a witness to the instrument presented to me is genuine. The signatures of J. H. Rainbolt, J.W. Green, and G. A. Preston, as attesting witnesses, are also genuine; they were all made in my presence; that is a contract with J. H. Rainbolt for the construction of Boeuf river draw-bridge; the paper now presented to me is in my handwriting, and is a copy of the original contract which I wrote; also that is a correct copy *verbatim* of the original. The original of that contract was executed at the time it bears date.

Defendant offers in evidence certified copy of the agree-
61 ment with J. H. Rainbolt, dated May 20th, 1880, and referred to in the testimony of M. N. Coe.

Offers charter of V., S. & P. R. R. Co., being act No. 228 of the acts of 1853, and the organization of the V., S. & P. R. R. Co., of date 2nd Dec., 1879. It is agreed that the pamphlet containing the above shall be used without copying them into the transcript.

E. Nettles, duly sworn for defendant, says:

I live in Girard, Richland P'h, and have been merchandising there since 1876, dealing in general plantation stores. I am farming on my own account, and do a small advancing business, not exceeding 12 or 1,500 dollars a year, my principal business being a cash business. My farm is about 4¼ miles from Girard, due north. I lived in Girard since I came from school, in 1872 or 1873. I am generally riding over the country a good deal, especially in the fall, collecting or buying cotton. I go as far down the river as twenty-five miles. I did not farm any in '79 or '80. I farmed in '81, and since that time I bought the Nelson place. I recollect the season of
1880; it was raining all the time; the cotton grew very rank,
62 and was very hard to pick & gin. I had some cotton sold for me as low as 3 & 3¼ cents. I am satisfied the rainy season commenced in August that year & rained the whole time. We had no overflow from the Mississippi. The only overflow we had was from these incessant rains. There was an overflow in the spring of 1880 from the Mississippi river. The effect of the overflow was to make the water very high there, & it disappeared the latter part of

June. To the best of my recollection, I do not think [it] was sufficient to stop the trains from running in 1880. The effect of these August rains caused Boeuf river to rise. It is a very unusual thing for Boeuf river to rise in the fall until December.

I know in 1875 we had three overflows, but that is a rare instance. This was from the Mississippi overflow.

I remember the condition of the bridge before Mr. Rainbolt went to work on it.

I had heard several speak of it as being very shakey.

I have stood on the turn-table myself when the train passed
63 over it, & the whole bridge shook. I know Mr. Rainbolt. I became acquainted when he was road master previous to Mr. Preston. He was a contractor and railroad man generally. He was an energetic man. I think he commenced work on the bridge between the 5th and 10th of July, 1880.

He had a very good force. They were mechanics. He boarded at Mr. Guthrie's awhile, and afterwards at Mr. Jim Kelly's. Kelly's is a quarter — from the bridge, & Guthrie is right on the bank of the river. Mr. Rainbolt worked all the time until he finished the job. The overflow retarded the work. I was living at that time about a quarter — from the river bank. I asked Mr. Rainbolt every day how the work was progressing, & had to go to the work to ask him, as I did not get up soon enough to see him before he went to the work. Mr. Rainbolt made an effort to use the original piling in the prosecution of his work by putting new caps on the piling. He intended putting bends on these caps on the old piling for the pur-
pose of supporting, but the water rising over the caps pre-
64 vented him from doing this, and he was compelled to drive new piling across the river on which to rest the draw. Around the turn-table in the center he had to put a dam in order to work under the turn-table to put in new bends there. Before he completed it the water rose over the dam, & he had to drive new piling for the turn-table. The water made the work he had already done useless, because it rose over it. It was some time, perhaps a month or more, that was consumed in work that was rendered useless by the water. The water rose once over his work, & then went down again. While the water was up he drove the piling. This must have been a month before the 1st of November.

Mr. Rainbolt has Mr. Easton working for him besides his own force. Mr. Easton's force worked at night, while Mr. Rainbolt worked in the day. Mr. Easton's force varied—sometimes as many as nine men, sometimes only six. Easton was employed by the V., S. & P. R. R. He had a floating bridge gang. Mr. Easton was employed by the V., S. & P. R. R. I traded for several of his time checks on
the R. R., which I collected. Mr. Rainbolt's force worked in
65 the day time; Mr. Easton's at night. They worked Sundays and every day. The river was high enough on the 4th of November for a boat to pass through the bridge. Mr. Hamilton was telegraphed to by me of the condition of the river. I kept him posted continually. He knew of the obstruction at that time. It

was at the request of Mr. Hamilton that I kept him posted as to the condition of the river & of the obstructions.

I do not know that he knew anything about the obstructions across the river before the 4th November. I telegraphed him that on the 4th Nov. there was water enough for a boat. The Era No. 10 came up there the first time on the 9th of Nov. I went on board. She had some Girard freight; very little. If she had any freight for above I did not see it; she did not put it out. On the 9th of November there was very little cotton above the bridge for shipment. Mr. Hamilton came back again on the 19th or 20th of Nov. with his boat. He laid over there. He returned again on the 23rd Dec. He laid over one trip on ac. of not being able to get through the bridge.

On the 13th of Dec., 1880, I telegraphed him that there was
66 only 3 feet on the *on the guage*, which was not sufficient water.

On the first of December there was not sufficient water for him to get through. He was at the bridge on the 19th of November, and it took him five days to go down, and would have taken him five days to come back. From the 29th of November to the 23rd of Dec. there was not sufficient water to have taken him to P't Jefferson if he had come.

I telegraphed Mr. Hamilton on the 13th that the bridge would be completed on the 20th. I again telegraphed him on the 16th, and telegraphed him on the 18th that the bridge was ready and six inches of water on Well's guage.

I know the condition of the crops was very backward that year prior to the first of Dec. There had not been three weeks of good weather at the outside the whole fall. By the 19th of November that fall not one-tenth of the crop had been gathered.

It is seven miles exactly from Eason's Ferry to the R. R. crossing by land. There is no cotton made on this side of Boeuf river that is shipped at Rayville. The cotton from this side of the river
67 is shipped at Girard. The cotton that is made on the east side of Boeuf river when shipped by rail is shipped from Rayville.

In the winter of 1880 the steamboat Earle came up Boeuf river. She came along the latter part of December, I know, because she went above the bridge; it may have been the 1st of January. I was on board of the Earle. She brought up no freight for above the bridge, that I know of; she brought no freight for Girard. I was the only one that shipped on her from above the bridge. She got but one bale of cotton from above the bridge, and I shipped that myself. She did not return to the trade. There was no other boat come in that year but the Earle outside of the Era. I know nothing of any letter written to Capt. Hamilton from there. I ship cotton and freight on the Era; the freight is about the same as on the railroad. The Era only runs in the river when it pays. When there is no business she does not come up. She lays over until she gets a trip.

Cross-examined:

The Era has been running in the Boeuf river trade since
68 1874, to my knowledge. When Boeuf river is navigable she runs in that trade exclusively. When she has business she runs regular; when she has no business she sometimes lays over in New Orleans for a week. She makes ten-day trips when she has business; when she has no business she does not make them. The principal up freights in that section of country are brought up in November and December. I went upon the Earle at the bridge thinking I would buy some cotton above; I bought that one bale of cotton and could get no other, and got off at the bridge. I do not know why the Earle came up the river; I suppose she came up after business of course. I do not not know whether it is usual for a boat to come up Boeuf river on a venture without some up freight. I do not know that it is unusual for a boat to come up Boeuf river without freight. I receive all my freight by rail because I buy all my good- in St. Louis. The Era No. 10 cannot bring it to me. I could not say positively that I received no freight from New Orleans during Nov. & Dec. by rail. I buy all my sugar, coffee, molasses, & candies in N. O., and may have rec'd some
69 goods by rail during Nov. & Dec. I recollect that I did buy some in New Orleans at that time. I could not not tell how [far] into Arkansas Boeuf river runs. It runs into Arkansas. No boat ever goes farther than P't Jefferson because there is no business. I only know of one instance where a boat went two miles above P't Jefferson to a man named C. W. Bakely after some cotton. There is no business above there; the country is all a swamp on both sides of the river. I have been about ten or twelve miles above P't Jefferson on Boeuf river. I have been all over that country. Boeuf river is not as large above there as it is at P't Jefferson. At P't Jefferson Boeuf river is as large as it is anywhere, because the lake heads right there. I can't say Boeuf river is as wide above there as it is below P't Jefferson. I have only been up there during extreme low-water hunting. I shipped cotton by the railroad between 9th November & 20th of Dec. I also shipped cotton from below the bridge by the boat; I could not tell how much cotton by the R. R. during that time, because I do not know; if I had my cotton
70 book I could tell; it would be a *it would be a* hard matter for me to approximate it. I shipped something over one hundred bales that year; of that the largest portion was shipped from Girard by R. R. I shipped very little cotton between the 9th Nov. and 20th Dec.; I could not tell how much. I do not know how many bales of cotton I bought between 9th Nov. & 20 Dec. By the 20th Dec. about one-sixth of the crop of cotton had been gathered. It commenced raining in August, and continued raining during the whole fall; sometimes there were light showers, sometimes heavy rains, sometimes only heavy fogs. That kind of weather continued during November & until after the 1st of January. There was some fair weather during Dec. During the whole fall we had about three weeks of good weather altogether; not consecutively, but during the entire fall. We had no pretty weather that fall at all.

I telegraphed Mr. Hamilton first on the 4th of November. I could not tell exactly the next date I telegraphed him, but I kept him posted. I telegraphed him every day.

71 Mr. Rainbolt put sills on the old piles, and the water rose over them, and he had to put new piles in the river. There were about three sills. The first work was no use, because the water got over them. I further stated that he built a dam around the old piles at the turn-table to enable him to use them, but the water rose over the dam, and he was not able to do so. I suppose the sills were twenty feet long.

The work I speak of was all in the middle of the river. This was all the work that was done in the middle of the river. Rainbolt's force varied. His regular force was from six to nine. When he had heavy timbers to lift he got the section hands to help him. Mr. Easton had the same number of hands as Mr. Rainbolt. Easton's force worked at night alone until the bridge was completed. They worked over a month. I would judge the commenced about the first of October and worked until the 20th December, when the bridge was completed. I knew they worked at night, because I saw them there. I did not see them there every night, but I saw the lanterns go down to the work every night and come back every morning & that was all the use they had for them there. I saw

72 them at work at night at different times. Mr. Rainbolt commenced work at the river between the 5th & 20th of July. The water rose in Boeuf river so as to interfere with his work the latter part of August.

It did not continue high all the time. It varied. Sometimes it was higher and sometimes lower. It is a very seldom occurrence for Boeuf river to be navigable in November. It occurred in 1875, and I don't know when it occurred before or since in November. In 1875 we had three overflows. My presence in this town is to testify in this case. I came part of the way by hand-car & part by boat. The railroad brought me. I came from Girard. I telegraphed Mr. Hamilton on the 13th Dec. that there were 3 feet water on Well's *guage* and that the bridge would be ready on the 20th. I suppose about the 1st of December, after the 19th of November, the water became too low for navigation. It did not continue too low any great while, because I telegraphed him on the 13th that there was 3 feet on Well's *guage*. I suppose it did not continue too low four, five, or six days.

73 G. W. WRIGHT, being duly sworn, says:

I live in Monroe now, when I am at home. In 1880 I lived in Rayville. At that time I was part of the time d'y sheriff. The latter part of the time I was freight & ticket agent for the R. R. I had charge of the books of the company. I received & shipped the cotton & received and delivered the return freight rec'd by the R. R. I have the means of knowing what were the receipts and shipments of cotton during *during* the months of November & Dec., 1880, at that agency. The books show them. They also show the am't of freight during the months of Nov. & Dec., 1880. There were rec'd for

shipment by the R. R. at Rayville between 7 and 800 bales. That number covers cotton shipped to all points, Vicksburg & New Orleans. The am't of return freights from all points during those two months were $1081; of that freight $303 came from N. O.; of the cotton, about 700 bales were shipped to N. O. I know nearly everbody in the p'h, and have a very general acquaintance of the country. Of the 700 bales shipped to N. O. about one-seventh was rec'd from above the R. R. and the balance from below Ray-
74 ville, is about 2½ miles from Boeuf river. I could not tell what proportion of the 100 bales from above the R. R. was shipped between 10th Nov. and 20th Dec. I presume, though, about half of it. I know a great many of the shippers and the localities where the cotton came from. Most of it was shipped by merchants at Rayville, who bought it there. Of that cotton not more than about 30 bales would have been shipped by river. Of the return freight, I don't think the receipts from above the R. R. would have amounted to ($40) forty dollars for the two months. In 1878, during the same two months, there were shipped 884 bales from that station. The freight receipts for the corresponding period in 1878 were $1,700.69; of that amount, $739.87 was from New O. In 1879, during the same period, there were shipped 1,898 bales from that station. Return freights in 1879 amount to $1,882.42 during these two months. Of this there were $742.93 from N. O. 1879 was a great deal more favorable season than 1880. We had better weather for gathering and preparing crop for market. The fall of 1880 was very wet. It retarded greatly the gathering and preparing the crop for market & shortened the crop. It made the road very bad
75 and made the hauling quite difficult. By the 19th of Nov., 1880, about one-fourth of the cotton crop around Rayville was ready for market.

Cross-examined:

By the 20th of December about one-half of the cotton crop around Rayville was ready for market. These are mere approximations. I could not be positive. In Nov. & Dec. I was in Rayville as freight and ticket agent in def't's company. My duties necessarily kept me confined to my office. I did not go out into the country after the 8th of Nov., when I took charge of the agency. The roads were not impassable; people came and went. There was very little hauling done in town. I have been in Richland p'h since 1874. I have been upon the west side of Boeuf river as high as Lake Lafourche, & on the east side about 10 miles above Rayville.

THOMAS JONES, duly sworn for def't, says:

I live in Richland p'h, about 5 miles above Girard; have lived there for 37 years; am a farmer & merchant. I live on the west side of Boeuf river. I am pretty well acquainted with that section of country. I know every farm from the railroad for some
76 distance up the river. From Girard to Pt. Jefferson, by the road, it is fifteen miles. I have been on Boeuf river above Pt. Jefferson, but not often. I have crossed it two or three times

above Pt. Jefferson. The country on Boeuf river, above Pt. Jefferson, cultivated only in small, little places; there is very little high land—small, little ridges—on Boeuf river above Pt. Jefferson. Pt. Jefferson is the head of navigation on Boeuf river proper. Eason's Ferry is about six miles from Pt. Jefferson by land. Eason's Ferry is on Lake Lafourche. A steamboat going to Eason's Ferry would go up Boeuf river to Pt. Jefferson, thence through a cut into the lake. The general course of Boeuf river is rather southwesterly; the course of the cut-off to Lake Lafourche is in a westerly direction. Eason's Ferry is about 8 miles by land from Girard. I recollect the season of 1880—the summer & fall. We had rains more or less pretty much all the time from the last of July all the summer & fall. It rained almost all the time. I think the rain set in about the last of July. We had an overflow that spring from the Mississippi river. It went off of most of the cultivated land, about
77 the 1st of June. The rains were very damaging to the cotton crop—it retarded the opening of the cotton. It was a late season for the cotton crop. The rain prevented me from gathering my crop—anything—as early as usual. On the 9th of Nov. of that year I had about half of my cotton crop ready for market. My recollection is that I shipped but very little cotton from the 9th of Nov. to the 1st of Jan'y. When I ship my cotton by rail I ship from Girard Station mostly. I don't think I shipped any cotton by rail prior to the 1st of Janvary. I might have shipped some; do not recollect. I have no recollection of making any effort to haul any cotton to Girard. I made a great many efforts to get my cotton from the field to the gin. I think I had about half of my crop ready for market by 9th of November; may be not so much; the result of my efforts to get my cotton from the field to the gin-house was that I got about two bales there by that one effort by taking very small loads. The reason I could not get it there the ground was so rotten I could not get it there. A great deal of the cotton that I
78 gathered looked like it was heating, and would rot in the pens. I had difficulty in getting it ginned, being brought on by being gathered in wet weather. It required a good deal of stirring and fixing to get it into a condition to gin. In October there were some two weeks that were very good cotton picking weather. There never was more than a day or so at the time of good cotton-picking weather; it was then very wet under foot. I had abundance of labor, especially cotton pickers. I have that in my bargain that all hands must pick cotton in picking time. In proportion to the land I cultivate I think I have a greater abundance of labor than any other planter in that neighborhood, especially cotton pickers—little fellows. I took advantage of the two good weeks in October. I set everything to picking & stayed right with them, & picked about 7 bales a day. There were some fair days overhead once in a while that a person could have done some good picking if it had not been so wet.

It was after the good spell of weather that I had so much difficulty in getting my cotton to the gin.

79 The condition of the roads and fields got worse and worse all the time during that season after that good spell of weather. If I shipped any cotton by rail it was very little. I held it until the boat came along in January or February. I shipped it by Era 10. I don't think there was but one bale of cotton shipped from above the bridge by any other boat that season. That was by the Earle. I do not remember what time that was. Cotton by the Earle was the same as by the other boat. The Earle did not bring up freight of any consequence far above the R. R. I had a good chance to know how the weather affected planters that fall. I merchandise- in Girard and Rayville and rove- about a great deal and saw a majority of the places. There was hardly a week that I was not at every gin on both sides of Boeuf river from the R. R. to Pt. Jefferson. In a great many fields you could hardly miss what they had gathered. They had gathered very little. On the 1st of Dec. there was not much over a third of any of the cotton crop, taking the country over, gathered. Very little of the crop that had been gathered had been ginned.

80 Mr. Balfour, my neighbor, ships some of his cotton by rail & some by boat. He is on the west side of the river.

When he ships by rail he hauls to Girard usually. Girard is his main shipping point by rail.

I have seen him haul some, very little, cotton to Rayville. The road from Balfour's to Girard passes by my place. There is no other road from Balfour's to Girard. I don't think he could get to Girard any other way by wagon. I was riding about a great deal of my time. If he had hauled 30 or 40 or 50 bales of cotton to Girard I would have been very apt to have seen some of it passing by my house. I do not remember seeing any of it pass by my house. I was not much at home at that time, and was up and down the road all the time.

There was very little cotton hauled to Girard by any one during Nov. & Dec., 1880. I do not know of but very little cotton in all that section hauled to Girard during Nov. & Dec., 1880. There may have been ten or fifteen bales hauled there. Dr. Ryan hauled right smart cotton to Girard, but then he usually hauls to Girard; he lives right close there. After Nov., 1880, most of the cotton went

81 by boat. I don't remember any cotton out of that section that was not shipped by boat.

I may have shipped a little myself, as I stated a while ago. We got supplies in small quantities pretty much all the time, but we usually begin to receive them in large quantities by the 1st of March. To a great extent we lay in a supply for 3 or 4 months in the spring. A great many of the merchants provide themselves with their bagging and ties in the spring. Farmers usually get a small supply of bagging & ties in the spring. This is for the comming crop. There was very little freight coming into the country above the R. R. in Nov. & Dec., 1880. There was right smart cotton ready for shipment above the bridge in November. I know I had 30 or 40 bales; nearly all of it afterwards was shipped by boat. I do not think from the bridge to P't Jefferson she lost 50

bales during that time; but I am unable to state what was at Eason's Ferry, as I was at every gin time and again. I do not think there were more than 50 bales shipped by R. R. during that time from the R. R. to P't Jefferson.

My recollection is that I did not ship any cotton by the R.
82 R. that I might have shipped by the boat. I might have shipped a few bales. I do not think it was possible for the pl'ff to have been damaged $3,000 by failure to make the trips above the bridge during that time. Knowing the condition of the country, the quantity of cotton ready for shipment, and the up freight, he was damaged any am't as far as P't Jefferson; as far as Eason's Ferry is concerned I do not know.

I recollect when the Era came to the bridge the first time. It is very seldom that Boeuf river is navigable at that time of year. In 1865 Boeuf river was navigable at that season of the year from rains; navigation is very uncertain. My recollection is that when the draw was open the first time the boat could not pass through, the river not being in a navigable state. I do not remember how long before the bridge was open the river was not navigable. I know there were different times after the river first opened that the river went down and was not navigable; it fluctuated. I forded the river several times after that at different places between the time the boat first came up and the opening of the draw.
83 I have known a boat to go to P't Jefferson and be glad to get out light when the river was fordable at Girard.

I do not know anything of any movement of Mr. Hamilton to have certain letters written to him, signed by different parties at Oak Ridge, urging him to remove the obstructions. I do not know of any loss of popularity by Capt. Hamilton for his failure to remove the obstructions. The opposition boat mentioned did not get patronage sufficient to injure Hamilton's business. I think he only made two trips—one only above the bridge.

Cross-examined:

I see on the map that Bœuf river goes into Arkansas. I have not been up as far as Arkansas. I have been up Boeuf river as far 30 or 40 miles above P't Jefferson. At the highest ferry I crossed at it is a great deal smaller than below. In high water, if there was nothing else to prevent it, small boats might go up as high as where I crossed it. I know of nothing else to prevent it. There
84 was a very small ridge, about 15 acres, where there was a farm, and about a mile from the ferry that I crossed. I have heard of one boat going beyond P't Jefferson; they have to turn at P't Jefferson to go to Eason's Ferry. Eason's Ferry is the shipping point for Oak Ridge, Prairie Jefferson, Gum Ridge, and a large scope of rich country. It is not the principal shipping point for Prairie Merrouge, but very little freight for Prairie Merrouge is shipped from there. It is the shipping point of a rich scope of country. Oak Ridge is a town. I think there are five or six stores there; a large number of large plantations in the neighborhood. I do not know how much cotton is shipped at Eason's Ferry. Usually

a great deal of the cotton from there is shipped by rail before we have water. It is a hard thing to approximate how much cotton would be shipped from there. If all the cotton in that section of country was hauled to Eason's Ferry there would be as much as five thousand bales, I should think. I reckon there would be even more. Sometimes a portion of that cotton is hauled to Monroe; some years a good deal; when Boeuf river is navigable mer-
85 chants at Oak Ridge and planters in that section of country mentioned above get their freight at Eason's Ferry. There are some pretty large merchants at Oak Ridge.

I do not know how much cotton there was at Oak Ridge, or in the country about Eason's Ferry, at the time the river was navigable in Nov. I did not get but very few bales ready for market between 9th Nov. & 20 Dec. I got, perhaps, one-sixth more of my crop gathered in that time. In 1880 I gathered 207 bales. In 1879, to the best of my recollection, I made 204 bales. It was some time between the 1st and 20th Nov. that I was stalled trying to haul the cotton from the field to the gin. The road kept getting worse all the time from that time on. I did not get a good deal of my cotton to the gin till March. I tried repeatedly; could not make no out at it; just staved my teams up. I was not holding my cotton for better prices. I was anxious to get it off. It was owing to the roads being so bad that I could not get it off. I never saw any difference in the price of freight on cotton, between good and bad cotton, & I know very little about how much cotton is shipped from Girard down Boeuf river. There are about fifteen hundred bales of cotton
86 shipped from about Rayville & Girard, on Boeuf river, above to P't Jefferson. I know Mr. Balfour. He lives above me on Boeuf river, about 3 miles. He is a farmer and a merchant. He merchandises at Rayville. He stands as well as anybody in the community. He seems to be an intelligent man. I know Mr. Vickirs. He lives at Alto. I know he is a farmer. He has been a merchant. He stands very well. I know Mr. J. Wm. Davis; he is a large merchant, doing a pretty considerable business. He stands very well. I know Meyer and Baer; they are merchants at Oak Ridge, & stand very well. I know John Jones; he has a farm, and boards the clerks at Oak Ridge. He stands very well. Leroy Lee was a merchant at Oak Ridge in 1880. He stands very well. J. E. McGowan has a small, little farm and clerks at Oak Ridge. He stands very well. E. W. Baird is a practising physician at Oak Ridge. He has a small place there; generally rents it out. He was merchandising in 1880. He stands very well. W. H. Handlin was clerking in Dr. Baird's store in 1880; stands very
87 well. J. M. sharp is a planter four miles from Oak Ridge Prairie, Jefferson; stands very well.

I know two W. J. Jordains. He is a physician and a large planter. He lives above me, on the east side of Boeuf river, about 4 miles. He stands very well.

Dr. Ryan in 1880 lived about 1 mile from Boeuf river. His plantation extended to the river. He lived 2½ miles from Girard. Merchants usually renew their stock in the fall. Usually they lay

in more stock early in the fall than at any other time. Most of the merchants brought up very large stocks early in the fall of 1880. I do not know of my own knowledge what the expenses of a steamboat are. I really don't know how many trips the Era usually makes during the season. Some seasons she makes more than others. I have seen the Era make 10-day trips one year, but usually about 15-day trips. The reason for the Era making the 10-day trip was because another boat came in and made 10-day trips, so he made 10-day trips also. I know the river to have been up in 1854 within ten inches of high-water mark in September. There was no
88 boat, because there was nothing for a boat to do. I have seen the river navigable a few other times early in the fall. In 1875 and 1880 it was. I do not remember any other time; it may have been. I do not recollect that the river was navigable from rain-water in 1867. I would not say it was not. Boeuf river is usually navigable three months—during Jan'y, February, & March; seldom that it is not navigable those three months. In the spring of 1880—it must have been the first of July that it ceased to be navigable. I know I finished planting cotton on my lowest land about the 9th of June, and the river at that time had not fallen more than 4 or 5 feet. It would hardly have fallen fifteen or twenty feet in less time than between the 9th of June or last of July, or it would have fallen faster than ever before. There was an obstruction to the navigation in 1880. The obstructions consisted of piling driven into the channel of the stream not far from the centre. I know there was a great portion of the channel that there was piling across sufficient to keep a boat from passing. They were driven about 15 or 20 feet.

They commenced work on the bridge in July, after the
89 water had fallen. The obstruction to navigation remained until a few days before Christmas, when the draw was first open. I don't know when the obstruction to navigation was first put there. Navigation was obstructed from the 9th Novem. to the time the — was opened, and had been obstructed some time before the 9th of November.

Mr. Rainbolt was the contractor building the bridge. I think he had from 15 to 20 hands. I counted them repeatedly. Some of them were mechanics. I don't know how many. Nearly all of them were white men. Eastman did not go to work for some time until after Rainbolt had gone to work. I do not know how long Eastman worked with him. I saw them building the draw of the bridge at Monroe. It was built up & down the river. If the draw at Boeuff river had been built up and down the river it would not have obstructed navigation. There was nothing that I see that prevented the draw from being built up & down the river.
90 The reason of the delay was because the water got over some of their work while they were building the bridge. In the first place they were trying to build on some old piles, and before they got through with that work the water got over them. I don't think they stopped entirely waiting for the water to fall. I passed there not long afterwards and they were driving new piles.

I do not know whether they — to wait for the new piles There were a great many timbers there. They drove the new piles while the water was up. I do not know whether the water came up and interfered with the work. They continued driving the piles & constructing the substructure, notwithstanding the fact that the water was up. They were at work always when I passed there, whether the water was up or whether the water was down. I can't remember when the water came up and interfered with the work. There was so many times that the water was up and down that season that I cannot remember the exact time. After the water rose that interfered with the work. I do not remember whether the water ever fell again below that. I hardly think it did.

Redirect.

I do not know of but one instance of any boat going above P't Jefferson, except to a gin about ¾ of a mile above. Boats
91 never navigate it above P't Jefferson.

G. S. Boyd, duly sworn, says:

I reside at Girard. I was living there in 1880. I was railroad agent at that time at Girard. The construction of the false work was commenced in the early part of July. The river was not navigable at that time. It had been navigable about two weeks before work was commenced. I have lived at Girard eleven years. Boeuf river is usually navigable from the 1st of Dec. till the spring overflows subside, which is usually in May or June. It is a very unusual occurrence for Boeuf river to be navigable as early as the 8th or 10th of November. I could not state exactly how many men were employed. There were from 20 to 25 men kept at work by the contractor and by the railroad. When the work first commenced the contractor worked day labor, but in Nov. the railroad put on a night force which was kept up until the obstruction was removed. I know the incessant rains & the rising of the river retarded the completion of the work and the cold weather.

A good many of the hands left, having to work in the water
92 during the cold weather. The first work they put in was to support the track while the trains passed over, the removal of the old bridge, and putting in a new foundation the water rose over it. It was all abandoned and piling driven for the new structure. It had become useless by the water rising over it. It was not practicable and impossible to have trains running with putting supports under the track when it was cut loose from the old draw. I was at Girard when the Era No. 10 made her first trip in November, 1880. The river had been navigable then five days. For several weeks previous to that the river had been considered at low water. It remained at a navigable stage from Nov. 5th to the 18th of Dec., 1880. The Era No. 10 made three trips from the 5th of Nov. to the opening of the draw; two trips she had navigation above the bridge and on trip, the last, she had not. The last trip I opened the bridge for her, but she could not go through. The

water was not high enough between her second and third trips for the Era to have made another trip during that time.

She could not have reached the bridge. The Era was pre-
93 vented the two first trips from going above the bridge by the obstructions placed there by the R. R. Co. There was no water for her to have gone above the bridge the other trips. I knew the stage of water in Boeuf river by a steamboat gauge there. It was put there for them to know when there was water & how much water. I know pl'ff was informed early in Nov. of the condition of things there and of the obstructions. He was informed of this before he left N. O. I know he was informed, because I sent him a telegram to that effect. The telegram was of my own accord. He told me he received it. I have been depot agent at Girard 11 years. I receive the cotton & deliver the return freight. No one else has anything to do with this. During Nov. & Dec., 1880, there were received for shipment over the road 1,001 bales at Girard. During Nov. and Dec., 1879, there were 3,165 bales for shipment. In November and Dec., 1880, New Orleans freight, amounting to $575.36, was received at Girard. In Nov. & Dec., 1879, N. O. freight, amounting to $938.79, was rec'd at Girard. Of the cotton rec'd in Nov. & Dec., 1880, 566 bales were rec'd
94 from the country above the R. R. I know all the shippers. Of this cotton 475 bales came from above Lafourche Lake, Eason's Ferry. The balance was from between the R. R. and Eason's Ferry. I suppose about ¾ of the return freight for 1880 were for customers above the railroad. All of it was for customers above Eason's Ferry, because it was for Oak Ridge, & that is beyond Lafourche. Return freights during Nov. & Dec., 1879, were in the same proportion; about ¾ were for above the road. In Nov., 1880, 448 bales of cotton were shipped from Girard; about ¾ of this was from above the R. R. 740 bales of cotton were received between the first week of Nov. & 20th Dec. There were 475 from above the lake. In 1879 about ¾ of the cotton was from above the road.

Cross-examined:

I am now in the employment of the company. I am in charge of the bridge for the purpose of opening the draw. I am living now at Girard, and have charge of the office. I came here to testify in this case. I came here on the 11th. They commenced work in Boeuf river in July. I cannot state the exact date. It was in the early part of July.

Boeuf river was low at that time. It had been not navig-
95 able then three weeks or a month. Boeuf river had not been navigable, to my knowledge, in Nov. before. I was in Girard in 1875. I don't think Boeuf river was navigable in Nov., 1875. I was in Girard in '67. It was not navigable in Nov. of that year.

In my recollection, '80 is the only year when Boeuf river was navigable so early. It has not been navigable so early before, I am certain of it. When Mr. Rainbolt commenced in July he had from 12 to 15 men at work. Of these I could not state how many were mechanics; they were all white men. I could not state that they

were not all mechanics, because I do not know. There were that number of men at work there until the middle of October, when the force was doubled. The R. R. sent the additional force there under Mr. Easton, which worked till the 20th or 23rd of Dec. The force under Easton worked at night, except when it was too cold.

Easton's force did not work in the day-time.

I saw Easton's force at work at night.

They worked from 8 p. m. to 4 a. m. They worked from
96 the 1st November to 23rd Dec. This force was not taken off until the work was finished. Easton's force assisted in removing the old bridge and building the new one. They were working on the bridge entirely across the river. The construction of the work necessitated new foundation entirely. The old foundation had to be removed, and a new put in, and from incessant rains and the rise in the river retarded the work.

The water rising over the foundation of the bridge, which was right in the centre of the river. The water was away from the foundation of the bridge. It was not dry; but there had been a little levee thrown around it to turn the water. The little levee was about two feet high. They could have done it in a day or a day and a half. The other work they were doing was removing the old foundations. They old foundation consisted of bed-sills placed in the bed of the river, which had become rotten, & unsafe, & had to be replaced by new ones.

I suppose there was a dozen, maybe of the old sills. I could not say how long it would take 12 or 15 men to remove a dozen old sills.

The foundation occupied a space the size of this court-room.
97 In all there were about 120 or 130 pieces of square timber to be moved. On top of the sills there were three or four bends on top of these caps, and on tops of the caps pieces of timber 12 inches square.

The high water on the river did not interfere with the work till the middle of October, but the continuous rains interfered with the work. The high water interfered with the work by getting over the foundation that the R. R. had placed in the river to build the bridge on. When that occurred they abandoned that work and made a new foundation by driving piles. They went right on while the water was up. As soon as they abandoned the idea of using the old foundation they commenced driving the piles. The only work done on the bridge besides work on the draw was repairing the abuttments and building the false work for the trains to run on while the bridge was being built. This false work consisted of a R. R. bend, put under the old track to enable trains to run.

It was during the latter part of the work, in the early part of Dec., that hands left on account of having to work in the cold. I
98 do not suppose the number of hands was lessened, as he was always replacing them by others. It was impossible to operate the R. R. without the construction being put there. If they had had a train on each side of the river it would not have been a R. R., because they would have had to put a boat in the river to transfer passengers and freights. You cannot go from here to N. O.

via Delta by all rail. The R. R. could have been opened by having a train on each side of the river. If Boeuf river bridge was suddenly burned or blown down the R. R. would be operated by putting a transfer in there. I know that such things are done.

The river could — navigable from 5th of Nov. to the 18th Dec. The boat arrived on her third trip on the 23rd Dec. It was only on the 18th that the river ceased to be navigable. I informed pl'tiff on the 4th Nov. of the obstruction by telegram. I sent him a night message. We were in conversation when he came to the bridge. He then told me that he had rec'd my dispatch.

He answered my dispatch.

I think he left New Orleans on the 6th. He told me in
99 that conversation at the bridge that he had advertised to leave, and that my message was too late.

I either wrote or telegraphed to pl'ffs that the bridge would be ready by the 10th or 15th Nov., because he was there on the 15th himself. I may have written or telegraphed to him that the bridge would be ready on the 20th Dec., but I do not think so. I may have done so. I wrote to him that I would telegraph him six days before the bridge was ready, so that he could let the people at Oak Ridge & above know when he would be there. I got Mr. Nettles to do it. Mr. Nettles telegraphed him from the 13th to the 18th Dec. that the bridge could be ready, & gave him the stages of the water. The rates for shipping cotton from Rayville & Girard are $2.50 per bale; by boat, $1.50. I never get any freights individually myself. I generally buy & sell myself right at home. Navigation opened in 1879, in the latter part of Dec.

The summer and fall of 1879 was, I think, very dry and pleasant weather, and no preventative of gathering the crop.

100 After the 23rd of Dec., 1879, the shipments of cotton from Girard averaged from 60 to 100 bales a day until the boat came up—till the middle of January.

The river was low, & the R. R. was getting all the cotton. Before the 23rd of Dec., '79, half of the crop of cotton had been shipped from Girard. My statement shows this, because I shipped that year 5 or 600 bales. After the boat commenced running, in 1879, I don't know how many bales I shipped. After the boat commenced running the shipments by rail are very broken. I know that in 1879 the bulk of the cotton crop all through this country was marketed by the 20th of Dec. It is every favorable year. I don't know that 1879 was an especially favorable year for gathering the crop. I think I sent Capt. Hamilton one telegram & one letter. He generally telegraphs or writes to me, & I answer it.

Re-examined:

I am telegraph operator myself.

There is no other operator there. I sent the telegrams to Mr. Nettles.

Cross-examined:

I sent telegrams marked X and XX, and letters marked XXX.

101 G. A. PRESTON, sworn for d'f't, says:

My name is G. A. Preston; I live at Monroe, La., & am roadmaster of the V. S. & P. R. R. I have occupied that position since Nov'r, 1877. I have been engaged in that kind of business a little over twenty-two years. I have direct special charge of all the track and bridges on the road. It is my special duty to see that those bridges and track- are kept in a safe condition for the running of trains. Prior to 1880 the V. S. & P. R. R. had a draw-bridge over Boeuf river, of the Howe patent. I have had considerable experience in erecting and repairing railroad bridges generally. That bridge, over Boeuf river, prior to 1880, had pile foundation with frame bench built on it. In 1880, prior to the rebuilding of that bridge, it was in bad condition. The substructure was badly decayed. The superstructure in the same condition. The east slope of the bank of the river had slided & threw the eastern abutment out of plumb, piles and all.

I do not know the depth to which those piles were driven. They were driven on the eastern slope of the bank of the river. I
102 think the length of the draw on that bridge is 154 feet & the eastern abutment upon which one end of the draw rested was affected by the slide. The draw was supported by a pier in the centre and by one abutment at each end. When the draw is open it is supported on the centre pier only. The foundation centre pier is about 25 by 36 feet. The top of the pier is about 25 by 28 feet.

In 1880, when I discovered the condition of that bridge, we made some repairs on it. I made a report of the condition to the superintendent of the road. J. W. Green was manager & superintendent at the time. My report was that it was necessary to rebuild the bridge. At that particular time the bridge, in my opinion, was in a safe condition for the passage of trains. That report was made in the spring of 1880. Nothing made it necessary to rebuild that bridge in 1880, except that it was on old bridge and not in a fit condition to run another year.

From my knowledge of the bridge from having examined it, it would not have been safe to have continued to operate it another
103 year without rebuilding it. Major Green was with me when I made the examination of the bridge; I don't recollect the exact time of that examination; in fact, we went twice to examine it. In 1877 I put an extra truss to help strengthen the bridge; we did some repairs on the entire pier in 1880. Major Green took steps to rebuild the bridge in 1880 by letting the contract to Mr. Rainbolt, and the timber was ordered for it. I do not recollect what time my report was made. When the contract was let in 1880 the timber was ordered, and as soon as they got the timber they commenced framing the bridge; that was done in our shop-yards here in Monroe. Mr. Rainbolt was the contractor; he is considered, so far as I know, a first-class bridge-builder & mechanic; Mr. Rainbolt worked all the force on the bridge that he could to advantage. The bridge was all framed here in Monroe and ready to put up as soon as the substructure was completed in the river.

All ths timber, iron, and material was obtained and put on the ground near the bridge.

I hauled most of the material there myself. In the spring
104 of 1880 there was an overflow. Communication with Boeuf river by the running of trains was suspended that spring on account of the overflow. That overflow was from the Miss. river overflow. I don't recollect how long it lasted. It was the 5th of May or 5 of June that we run the first train. I am rather of the impression that it was the 5th of May. Mr. Rainbolt commenced his operations at the bridge out there in the latter part of July, '80. He commenced as soon as the water had declined sufficiently for him to commence work. The first work that was done on the bridge itself at the river was driving piling & putting up false work. That false work was for trains to pass over while they were taking down the old and putting up the new bridge. The water came up several times & interrupted that work. For a while they had to stop work on the foundation on account of the high water. They were only stopped a few days at a time. They were something over two and a half months completing that work. They were delayed on account of the water comming up, which was too high for them to work.

I passed the bridge every two or three days while the work
105 was in progress.

I made inspections and examinations of the work during that time. I never passed there without inspecting it, except when I was on the train.

We had to drive new piling for a great portion of the pier. That was for all three of the piers, the centre pier and the two abutments. The piles were cut off at low-water mark on which to put the sills.

Question. Was it or not necessary to put the sills on this piling at low water mark to secure the foundation for the piers?

Objected to by pl'tiff on the ground that it is irrelevant and that it is the opinion of the witness as to what is necessary.

Objection sustained, to which def'ts excepts.

The driving of the piles & the erection of the piers was delayed by the water getting too high. During the whole time the work was being done on that bridge the work was delayed about six weeks from that cause. Mr. Rainbolt did not stop his work from any other cause but that. The erection of that bridge was
106 not delayed by any other means, not to my knowledge.

The river rose and fell, which was caused by local rains. There was other work carried on at the same time, besides the work on the foundation.

The company took special means to expedite the work beyond their contract. We sent one of our regular bridge gangs to assist them, & also sent a steam pile driver to drive piles from grade. It was necessary to drive piles from the grade, because the water rose so that we could not get enough drove below to cut off at low-water mark. Mr. G. W. Easton was in charge of the bridge gang that

was sent there. He is what I term a No. one bridge builder. He had a sufficient force with him to do the work. The hands were all experienced bridge hands. The work was continued Sundays and nights. Easton's gang worked at night and Rainbolt's in the day time. The night gang only worked portion of the time. G. W. Easton's gang went there between the 1st and 15th of October.

They were kept on the work until it was completed.

107 I have not noticed the time at which there is usually low water in Boeuf river. I don't think Boeuf river has been up from rain water as early as Dec. since I have known it, except in 1880.

Summer and fall was taken as the time to reconstruct that bridge, because it is the most natural time to have low water. It was showery on from August until some time in Nov., I think. It was an unfavorable fall for doing almost any kind of work.

Q. Considering the weather during that year and the character of the work to be done on the bridge, was it possible to have completed the work earlier than it was done?

Objected to on the ground that it is a matter of opinion about which the witness cannot testify. Objection sustained, to which defendants excepts.

It was not possible to have constructed that bridge and to operate the road without obstructing the navigation of the river, not to have run through trains.

Easton's force was sent there in order to facilitate the work and complete the bridge as soon as possible.

Cross-examined:

108 I am a mechanic in wood work & bridge building generally. The draw of the bridge that was there prior to '80 rested on pile foundations & wooden piers. The pier sat just east of the channel of the river. The pier that supports the present draw sets in the same place. The pier of the old bridge did not prevent the navigation of the river. The old pier and the draw could not have been rebuilt without interfering with the navigation of the river, because it had to have a support to hold the old bridge up.

Q. Could not the old draw-bridge be taken down without interrupting the navigation of the river while the water was up?

A. Yes, it could. The new draw-bridge and the piling could have been built there without interrupting the navigation of the river. There were no piles driven in the channel of the river. It was the false work to sustain the bridge for trains to run over while the bridge was being built that interrupted the navigation of the river.

109 That false work, a frame trussel, — framed on the old piling in the river. That trussel work spoken of extended across the river at intermediate points the whole length of the draw; that trussel-work was put there to support the bridge.

Q. Was not this for the convenience of the road for the operation of the business of the Co.?

A. I suppose it was. The road could not have been operated practically by having a train on either side of the river, because the costs would have been greater than the profits. Such things are done on railroads when bridges are destroyed & when it is unavoidable. I have seen it done frequently. The bridge was considered in '79, when some repairs were made on it. It was in a bad condition in '80 from being an old bridge. It had not suddenly become in that condition. The landslide spoken of at the bridge had been sliding for some years. It had slided some before I came on the road, but I do not know how much. It slided every time the water rose & fell. I reported the bridge needed rebuilding in consequence of the bridge being old and rotten, and not on account of the landslide.

110 The bridge was not out of line when I made the report. My first report was made in '79, when the temporary repairs were made, and then in the spring of '80 I made another report. I do not think I made that report in writing. I make some reports in writing and some I do not; it is owing to the nature of the report that it is in writing. When I make requisitions for supplies or other requisitions it is made in writing. Major Green was with me when I made the examination of the bridge, & that was the reason it was not necessary to make it in writing.

I do not know how many hands Mr. Rainbolt had at work here at Monroe in the shops. The number varied at different times, sometimes 5 or 6, sometimes ten or twelve, and maybe more than that. I do not know the exact number of regular hands he had at the shops.

The number he worked at the river varied at different times owing to the progress of the work and the number that could be worked to advantage.

He first framed the timbers at Monroe and then carried
111 them to the river. Part of the time he had two forces at work. I suppose it was about the latter part of July he had two forces at work. He had those two forces at work until he got done framing the bridge here at Monroe. I do not know how long that was. It was in the latter part of July. I do not know how many men he had in each of those two forces.

Easton had from eight to twelve men; sometimes less and sometimes more. They worked at night for about two weeks, or until we could work a sufficient number in daytime; then we quit the night work. I know they worked at night until a larger force could be worked in daytime, because I had communication with them, & because I put that force there for that purpose. I think it was in Nov'b'r that the night force was worked. That was some time after Eason's force went there. I could not say how long, some time.

I do not know at what time in '80 Boeuf river ceased to be navigable at the bridge. In May, '80, the water there must have been pretty high. In the latter part of May I suppose the water
112 in Boeuf river was probably about in its banks. I observed particularly at times during the summer of '80 the stage of the water there. I observed it during the overflow in the spring

I think the first high water came in March. I am not certain whether trains were run 5 of May or 5th of June that year.

Q. Was not the first work done by Mr. Rainbolt at Boeuf river to drive piles and erect temporary work for trains to run over?

A. The first work was to drive piles for the permanent work. Those piles were driven above and below the centre pier, and above and below each abutment. Those piles would not have interrupted the navigation of the river. The water rose and interrupted that work in August about twice—I don't know the dates—and two or three different times after that; I could not say at what time. They were driving piles with the hand driver. The Co. sent the steam pile-driver there in Oct., I think.

Q. Could not piles be driven while the water was up?

A. Some could & some not. A portion of the piles that were used there were driven after the water was up. The outside, upper,
113 and lower piles could not be driven while the water was up. Those piles are for the foundation for the bench to sit on. There is about forty-eight of those piles in all.

Those piles could not be driven at all with the steam pile-driver, because we could not get at them—could not reach them. We could not get at them, because they were about eighteen feet out from the centre of the bridge, above and below. The pile-driver could not be put in a raft or flat-boat & carried out so as to drive the piles. There was not water enough. When the water was up and interfered with the work it could be used then that way. A steam pile-driver could not have been used on a raft during low water, because there was not water enough. It could be used without a raft if there was a foundation for it on the bot-om of the river. At that place we drive on an average about six piles in a day with a steam pile-driver. Thirty or forty piles a day are driven sometimes, but not when the driver has to be moved by hand on the ground.
114 They drove from three to four piles a day with the hand-driver.

If everything were in the ground and everything favorable that bridge could probably have been completed in two months. By completed I mean put up ready for trains to run over; all the work done, framing the timber and everything else. If all the timbers were framed and put together beforehand & put on the ground ready, and all other work outside of the bed of the river had been done, it would have taken about six weeks to have driven the piling, put up the substructure, and complete the draw on the bridge. I don't think it could have been done in less time.

I live in Monroe. I did not see the work at the bridge every day. I saw it every two or three days, because I was passing along the road on the train or hand-car, frequently on the construction train and frequently a hand-car. I saw it while I was on a hand-car, perhaps, about twice a week. I would stop when passing there sometimes ten minutes & sometimes two hours. It was my
115 business as road master to inspect that work before it was completed. It was my business to inspect the timbers and see that no bad timbers went into the bridge. One of the bridge

gangs was sent there so as to facilitate the work & get it done as soon as possible. I did not stay there during the construction of that work more than an hour or two at a time. That was only as I passed up and down the road in the hand-cars or construction trains. I don't know that I passed there at night, except early in the evening. Easton's gang facilitated the work by having more men there, and by having a competent man there to superintend it at night while Mr. Rainbolt was not there. I am still in the employment of the company.

Redirect:

The road could have been operated during that work without running through trains by having an expensive transfer. To transfer there by wagon the distance would be about a mile & a half. The transfer would necessarily be a mile and a half, because there is a steep bluff on either side of the river there & a long tressel at the west end, which would make it very inconvenient & costly
116 elevating freight. To transfer freight that way would cost fully as much as the whole freight on the balance of the road.

I think sixty-four piles were necessary to be driven on that whole work. The weight of an engine and driver complete, of a steam pile-driver, is about eight tons. Our driver is erected on a flat-car.

It was possible but not practicable to have used the steam pile-driver on other work there than driving piles on the grade. If the steam pile-driver were taken off the car it would take ten to twelve men to move and adjust it, if they were rigged up for it.

It would have taken twice as long to move the driver by hand as it would to drive a pile. I mean it would average twice as long to drive each separate pile that way. It would be necessary to change it each time for each pile.

It would have been no economy of time, men, or money to have attempted to use the steam pile-driver on the piles above or below the piers.

117 We had snow once & sleet twice during the construction of that bridge; that delayed the work some. The men had to work in the water only a part of the time.

Boeuf river is, I suppose, about two hundred feet wide from bank to bank. In low water the east bank is about thirty feet high, and the west bank about twenty to 25 feet high. The R. R. Co. sent the steam pile-driver to the bridge some time in October. It was used to drive piles. Tracks could not have been laid on the ground on which to move this pile-driver. It could have been done, but it would have been like building another railroad. A track could not have been laid on the ground from Girard station to Boeuf river; not in the condition the country is now. The road would have to be graded.

It is not graded now. There are no mountains between Girard and Boeuf river. There are some small hills. There would be an incline of about thirty feet from Girard to Boeuf river.

I have seen a few tracks laid on the ground that way when accidents occur to R. roads.

118 Re-examined-in-chief:

There are several small ridges and several small sloughs between Girard and Boeuf river. To put a track from Girard to the river it would have to be graded down to a level or to a gradual incline from the depot down. There is a second bottom this side of Boeuf river & between the river and Girard of about 250 feet.

Defendant offers the testimony of Jno. W. Green, taken under commission. (Page —, *et seq.*)

W. R. WADSWORTH, duly sworn for def't, says:

I am clerk to the gen'l fr't & ticket agent for the V. S. & P. R. R. Co. I have the books of the Co. in charge. The two documents marked "A A" and B B are correct extracts from those books made by me.

Cross-examined:

I am clerk to Jos. F. McGuire, gen'*s* fr't & ticket agent of the V. S. & P. R. R. Co. A portion of those extracts are taken from books kept by me. Those books were not kept by me in '79.

119 I am writing in the same books, and doing the same kind of work as was done on the books from which these extracts were taken. I was in Delta in 1879. The books I kept were the fr't and ticket books.

Recalled for d'f't:

The mail, express, and news part of that extract are excluded from the books which I keep. I made the entries of the other items. The freight department of those books were kept by Jas. W. Milling, and the ticket department was kept by Mr. Coe for Maj. Green. I think they were kept by Mr. Coe.

Those extracts are a correct transcript frem the books of the office.

Jos. F. McGuire, gen'l freight agent, has charge of the books showing the amount of cotton shipped. Those books are in my possession. I am not successor to J. H. Milling. Jos. F. McGuire has charge of the department he kept. I had something to do with the books from which the extracts marked C C is taken. I had charge of them during Nov. & Dec., '80. The entries in the freight department of those books during those two months were

120 made by me. That includes the cotton carried.

Cross-examined:

Jos. F. McGuire is gen'l fr't & ticket agt. now. The books from which those extracts are taken are under his control. Those books are in the office of the gen. freight & ticket agt., in Monroe. I have charge of them. They are kept in the same office at night; not kept in a strong box. I clerk for J. F. McGuire, & in that way I have charge of those books.

Def'n't closes.

Plaintiff offers letter of G. S. Boyd to Jas. Hamilton, dated Dec'r 6th, 1880, marked XXX, (page 204).

Offers telegram dated 11 Dec'r from G. S. Boyd to Jas. Hamilton, marked XX.

Offers telegram from G. S. Boyd to Jas. Hamilton, marked X, (page 205).

W. H. McVeigh, sworn for pl'ff, says:

I am acquainted with Boeuf river; have been on Boeuf river frequently. I have lived in Franklin parish since '63, I think. I have been on Boeuf river as far as the Ark line; think I have been there as far as Chicot Co. I am not positive about that.
121 I camped there during the war. I have have only crossed Boeuf river at the bridge, on the train. I do not think there is much difference in the width & depth of Boeuf river at the bridge and above there, where I have crossed it. I mean up near the line where I was camped. It has been a good while since, & my attention was directed to it by the river rising while I was there, & by my crossing it. I have been on Boeuf river at Point Jefferson. I don't recollect whether or not I crossed it there. I think Boeuf river runs through Chicot county, & I think I was on Boeuf river while I was in Chicot Co. I don't know that I have been on Boeuf river at any point between the Ark. line and Pt. Jefferson.

Cross-examined:

I don't know that I have ever been at Rashes' ferry on Boeuf river. I don't know that I have been at Owen's ferry. I don't know the ferries by their names. My knowledge of Boeuf river is exceedingly limited up in that country. I don't know whether Owen's ferry and Rashes' ferry are in La. or Ark. I do not know
122 whether Boeuf river is navigable for steamboats above Pt. Jefferson. I think we were camped on Boeuf river three or four days. I can't locate Boeuf river above Pt. Jefferson. I have been on Boeuf river up there where there is a bluff bank on one side and a low swamp on the other side. My home is in Franklin parish, about thirty miles from the R. R. bridge over Boeuf river.

Pl'ff closes.

I certify that the above and foregoing is all the evidence adduced on the trial of this case.

Witness my official signature this 17th day of April, 1882.

AUSTIN GREEN, *Clerk, D. C.*

123 *Interrogatories to Hamilton, Mohr, Faust, & Pully. Filed 22d Mar.*, 1881.

JAMES HAMILTON
vs.
THE VICKSBURG, SHREVEPORT AND PACIFIC R. R. COMPANY.

Interrogatories to be propounded to James Hamilton, J. P. Mohr, E. M. Faust, and John Pully, of New Orleans, the answers to which are to be read in evidence on the trial of the above-entitled cause on behalf of the plaintiff:

1st. Do you know the plaintiff in this suit or not? Was he or was he not the owner of the steamboat Era No. 10?

2nd. If aye, when, in what river and trade did said steamboat run while she belonged to the plaintiff? How long has the plaintiff been running steamboats in the Boeuf river trade?

3rd. Were there any steamboats running in opposition to him *running* in said trade prior to the fall of 1880? What induced or caused this opposition?

4th. What connection had you with the Era No. 10? Were you an officer on said boat in the fall or winter of 1880? If so, state the office you had?

5th. Did the Era No. 10 attempt to go to Eason's ferry in
124 the fall or winter of 1880? If she was prevented from reaching that point, state why she did not reach it.

6th. Was there any obstruction placed in Boeuf river which prevented the free navigation of said river? In what did this obstruction consist? Who placed it in the river? Or by whose direction was it done?

7th. Was or was not a bridge, without any opening, draw, or gate, built across said river by defendant? For whose benefit and use was this done? Was it or not used by the defendant for its exclusive benefit? How long was the free navigation of said river between Eason's Ferry and New Orleans interrupted by said bridge?

8th. Did or did not the Era No. 10, under the command of the plaintiff, make more than one attempt to go to Eason's Ferry? How many did she make? How many trips could or would the Era [No.] 10 have made but for the bridge or obstruction to the navigation to the river?

9th. Was there or not sufficient water in the river for the Era [No.] 10 to have gone to Eason's Ferry when she made her first trips and ever afterwards during the time the obstruction remained in the river?

125 10th. Did the plaintiff sustain any loss by and in consequence of the obstruction to the free navigation of Boeuf river? If so, state what is the amount of loss or damage and in what it consisted.

11th. Did or did not the plaintiff receive letters and telegrams urging him to bring up the steamboat, and complaining because he permitted the defendant unlawfully to obstruct the free navigation of the river?

12th. Did the plaintiff or not demand of the agent of the defendant in charge of the bridge to remove the said obstruction to the free navigation of the river by his steamboat, under penalty of having to pay him his losses; when was this done; how often was it done; was the demand in writing; was a lawyer consulted before making the demand; what lawyer; is the annexed document a copy of the written demand?

13th. State anything else that you may know that will enable the court to understand the facts in relation to the subject-matter of this suit.

JNO. T. LUDELING, *Att'y.*

126 I hereby waive service of the order required herefor and accept service of the within interrogatories and waive the delay required by law, this 12th March, A. D. 1881.

Waiving all legal objections, as per written objections filed today.

BOATNER & LIDDELL,
Of Counsel for D'f't.

M'ch 22, 1880.

JAMES HAMILTON *vs.* THE V., S. & P. R. R. COMPANY.

The defendant objects to the interrogatories propounded to James Hamilton, J. P. Mohr, E. M. Faust, & John Pully, on the grounds hereinafter set forth, viz:

To 1st on the ground that parol testimony is inadmissible to prove the facts about which the witnesses are questioned.

To 3rd on the ground that the testimony sought to be elicited is irrelevant, in that the plaintiff herein cannot sue this defendant for loss of trade resulting from lawful competition, & testimony to prove a monopoly or the effects of competition cannot be rec'd or considered by the court.

127 To 13th on the ground that it is too general to admit of crossing. Reserving these special & all legal objections to the admissibility of the answers of the witnesses in evidence, defendant waives service of interrogatories and legal delays.

BOATNER & LIDDELL,
Att'ys for Defendants.

Cross-Interrogatories to Hamilton. Filed 22d Mar., 1882.

5th District Court, Parish of Ouachita.

JAMES HAMILTON *vs.* The V., S. & P. R. R. Co.

Defendant propounds the following cross-interrogatories to James Hamilton, plaintiff, viz:

1st. When did navigation open in Boeuf river in 1879; when in 1878; when in 1877, & in 1876?

2nd. Were you *to* aware when you left New Orleans for Boeuf river in Nov., 1880, that the repairs then being made on the Boeuf

river bridge at Girard would prevent your going above the said bridge?

3rd. You state in your petition that you were informed by defendant that all obstructions to navigation would be removed by the 10th of November, 1880. By whom were you so informed; was it given verbally or in writing? If the latter, annex the document to your answer.

128 4. On your first trip up Boeuf river, referred to in your petition, how much freight did you have for points above the bridge; how much on your 2nd and 3rd?

5th. What proportion of the trade on Boeuf river is above the bridge?

6th. How many trips did you make on Boeuf river during the month of November, 1879; during the same month in 1878?

7th. How long have you owned the steamboat Era No. 10, and how much did she cost; what is her present value?

8. What were the profits of your business for the season of 1879 & 1880? How much net cash did you make those years?

9th. Is not Girard the market point on the railroad at which the shippers on Boeuf river above the bridge could reach it?

10. What is the rate of insurance on cotton shipped in your steamboat?

11. How many bales of cotton will the Era No. 10 carry?

12. How long does it usually take her to make a round trip from New Orleans to Eason's Ferry?

13. How many trips did you make in Boeuf river during the season of 1879–1880?

14. Did you not consult other attorneys in Monroe relative
129 to this suit, and were you not advised that you had no cause of action against the defendant?

Cross-Interrogatories to J. P. Mohr. Filed 22d M'ch, '81.

Cross-interrogatories to J. P. MOHR:

1. What is your bussiness. Were you or not employed on the "Era Ten" the past season by the plaintiff?

2. Are you interested in the result of this suit?

3rd. Were you not clerk of the plaintiff on said boat or other boats for several years past; were you his clerk for the season 1879 & 1880?

4. If so, how many trips did you make in Boeuf river during that season?

5. How many bales of cotton did you carry out during the season & at what date in 1879 did you make your first trip; that is, after the fall trade opened?

6th. How many bales of cotton did you get during that season from above the bridge, prior to the 20th of December?

7th. How many below the bridge prior to that time?

8. What is the proportion of the trade above and below the bridge?

9. Was the Era No. 10 insured the past season; if so, for
130 how much; what is her value?

10. How many years have you been steamboating in Boeuf river?

11. Give the date of opening of navigation in that stream each year or season that you have known it.

Cross-Int'g'rs to Faust & Pully. Filed 22nd Mar. '81.

Cross-int'*ys* to E. W. FAUST & JOHN PULLY:

1. What is your bussiness or occupation?

2nd. Are you employed on the Era No. 10; if so, in what capacity?

3rd. When did said Era 10, or other boat run by plaintiff, make her first trip up Boeuf river during the fall of 1879?

4th. How many trips did said boat get above the bridge in said fall of 1879 prior to the 20th Dec. of that year?

5th. Are either of you interested in this suit?

BOATNER & LIDDELL,
Of Counsel.

Commission.

The State of Louisiana to any judge or justice of the peace or qualified officer in the city of New Orleans, Greeting:

Know ye, that reposing special trust in your fidelity and
131 provident circumspection, we do hereby authorize and require of you to cause to come before you James Hamilton, J. P. Mohr, & E. M. Faust & John Pully, of New Orleans, and do you them examine, on their oat-s or affirmation, touching their knowledge in a certain suit now pending in the fifth district court in and for the parish of Ouachita, State aforesaid, wherein James Hamilton is plaintiff and the V., S. & P. R. R. is defendant, and their answers to the annexed interrogatories so taken do you certify the same and enclose & send them to the clerk of said court at the town of Monroe, in order that the same may be read in evidence on the trial of said cause; also enclose and send this commission on or before the 1st Monday of April next, 1881, that being the first day of the next term of said court.

Witness the Hon. R. W. Richardson, judge of the said court, this 23rd day of March, 1881.

AUSTIN GREEN,
Clerk of the 5th Judicial District Court, Parish of Ouachita.

132 STATE OF LOUISIANA, *Parish of Orleans:*

5th Jud'c. Dist. Court, Parish of Ouachita.

JAMES HAMILTON *vs.* THE V., S. & P. R. R. COMPANY.

Be it remembered that on the day of the date hereof, at my office, No. 129 Common street, in the city of New Orleans, in the State of Louisiana, I, John Bendemagel, a notary public in and for the par-

ish of Orleans, State of Louisiana, duly commissioned and qualified and empowered to administer oat-s and take depositions, acting under and in virtue of the enclosed and annexed commission issued out of the fifth judicial dist. court in and for the parish of Ouachita in the case entitled James Hamilton *vs.* The Vicksburg, Shreveport and Pacific Railroad Company, being No. 1655 of the docket of said court, have, this sixth day of April, A. D. 1881, caused James Hamilton, J. P. Mohr, R. M. Faust, and John Pully, the witnesses named in said commission, all residing in said city of New Orleans, to come before me and, after having duly sworn them to answer truly
133 to said interrogatories & cross-interrogatories annexed to said commission, they answered as follows:

JAMES HAMILTON, being of lawful age, answers to the interrogatory I:

Yes; I am the person. I have owned the same from 1873 to date; am now the owner of same.

To interrogatory II he answers: In the Boeuf river trade since 1873.

To interrogatory III he answers: There were. Since the fall of 1880 a boat has been brought in said trade. The opposition was caused by the expression of disapprobation of the patrons of the Era No. 10 for not forcibly removing the obstructions of the river. I think this was the sole cause of it.

To interrogatory IV he answers: Yes; I was captain of her.

In answer to interrogatory V he answers: She did. She attempted to go there twice in the month of November, 1880, but was prevented from doing so by the stationary bridge, which had been
134 placed across Boeuf river by the Vicksburg, Shreveport and Pacific Railroad Company, defendant herein.

In answer to interrogatory VI he answers: There was. It consisted of the stationary bridge without an opening, which had been placed across the river by said defendant.

To interrogatory VII he answers: There was, by defendant, for its exclusive use and benefit. I first knew of the obstruction November 6, 1880, and the said interruption continued from that date until 22 Dec., 1880.

To interrogatory VIII: Yes; made two attempts and then laid up at New Orleans. Could have made at least four trips, if it had not been for the obstructions.

To interrogatory IX he answers: There was plenty of water.

To interrogatory X he answers: Yes; I did. The actual loss over and above expenses was	$1,239.73
135 Additional port charges, which lying up on account of said obstructions	290 83
Average loss of four trips lost in consequence of the obstruction, judging from the four trips of said boat made the corresponding time of the season before	6,060 00
	7,590 56

And besides this, at least $2,500 loss by competition, occasioned by the obstructions, besides attorney's fees and expenses.

To interrogatory XI he answers: Yes, I did; twice on November 10, 1880, & 21st November, 1880. The demand was made in writing. Singleton and Brown, of New Orleans, were consulted before making the demand.

To interrogatory XII he answers: Yes; I did twice; once on Nov. 10, 1880, & again on the 21st November, 1880. The demand, as I have stated in answer to interrogatory XI, was made in writing. I consulted Singleton and Brown, attorneys in New Orleans, before I made the demand. The annexed document is the original
136 document which was written by Mr. Singleton for me to make the demand, a copy of which was delivered to defendant. The bridge, in my opinion, might have been repaired during the summer low-water season, as there was abundance of time to do it, and no necessity for interfering with navigation. Seasons which open earliest in the Boeuf river trade are generally the best, because when the river remains down late planters and merchants are obliged to ship their freight by rail.

Answers of Hamilton to Cross-Interrogatories.

Cross-interrogatories:

In answer to cross-interrogatory he answers: The season of 1879 & 1880 opened on January 24th, 1880. The season of 1878 & 1879 opened Dec. 11th, 1878. The season of 1876 & 1877 opened January 23rd, 1877.

In answer to cross-interrogatory he answers: I had advertised, and boat was all ready to start with nearly all her cargo on
137 board and steam up, when I was notified that Major Green, chief superintendent of the road, wanted to see me at Mr. Brockett's office, on Magazine street, at 2 o'clock. I went there to meet him, & there learned from him for the first time that the bridge obstructed the navigation of the river; this was my first knowledge of it.

In answer to cross-interrogatory 3 he answers: This is an error as to date; it should have been December 10, instead of November 10, 1880. By Major Green given verbally in presence of George H. Lord & W. B. Brockett.

Mr. Boyd told me, as I passed down on my second trip, that the bridge would be open on the 10th Dec., and I concluded I would lay up until that time. He then sent me a telegram stating that it would be the 10th or 15th December before the bridge would be open, but stated that he would telegraph me in time, so that I could be there with the boat the day the bridge opened, which he failed to do, and I waited until the 18th December, when I found I would be forced to make another trip, at any cost, as I received several
138 letters from my patrons below the bridge accusing me of colluding with the railroad, and stating that I was losing many good friends by such conduct.

The telegram alluded to as having been received from G. S. Boyd is now in the hands of my attorney, J. T. Ludeling.

To cross-interrogatory 4 he says: Very little, as the boat's friends above the bridge knew we could not get through. On the 3rd trip it was not known in town that the boat could get through.

Mr. Boyd had agreed to telegraph but failed to do so.

To cross-interrogatory 5 he answers: Three fifths.

To cross-interrogatory 6 he answers: None in either 1878 & 1879 of that month, as there was no water, while the same time in 1880 there was abundance of it.

To cross-interrogatory 7 he answers: Since 1873. She cost $5,057.
I refused an offer of $6,000 for her at the beginning of the
139 season, but being near fly time now she might not be worth so much.

To cross-interrogatory 8 he answers: My nett profits were $15,830.52; received net cash, $15,360.22.

To cross-interrogatory 10 he answers: Seven-eighths to P't Jefferson & one-eighth to Eason's Ferry.

To cross-interrogatory 11 he answers: Twelve hundred and fifty bales of cotton.

To cross-interrogatory 12 he answers: Ten days.

To cross-interrogatory 13 he answers: Eleven trips.

To cross-interrogatory 14 he answers: No; I did not consult any other attorneys in Monroe; none but my attorneys, Singleton and
Brown, in New Orleans, who always advised me that I had
140 a good case, & who also advised to engage Judge John T. Ludeling, at Monroe, to prosecute my case, for the reason that the suit had to be brought at Monroe, which was the domicile of the defendant.

JAMES HAMILTON.

Answers of J. P. Mohr. Rec'd & Filed Ap'l 11, '81.

J. P. Mohr, witness of lawful age, answers as follows, to wit:

To interrogatory I he answers: I do. He has been an owner in said boat since 1873.

To interrogatory II he answers: In the Boeuf river trade; since the year 1873.

To interrogatory III he answers: Yes; since the fall of 1880 a boat has been put in the trade. This opposition was caused by the expression of disapprobation of parties who had patronized the Era No. 10, because Capt. Hamilton did not by force remove the bridge which obstructed the river & prevented navigation. This was, I think, the whole cause.

141 To cross-interrogatory IV he answers: I had. I was clerk of the boat, and am so now.

To interrogatory V he answers: She made the attempt to go there twice in the month of November, 1880, but the stationary bridge which had been placed across the river by the Vicksburg, Shreveport and Pacific Railroad Company prevented her from doing so.

To interrogatory VI he answers: Yes, there was; it was the sta-

tionary — which had been placed across the river by the said Railroad Company.

To interrogatory VII he answers: There was by defendant, for its use & benefit exclusively. We knew of the bridge obstructing the river for the first time on the 6 November, 1880, & from that date until the 22 December, 1880, the said interruption continued.

To interrogatory VIII · Yes; two attempts were made & then the boat was laid up. If it had not been for the obstruction, at least four trips could have been made, as everything else was favorable.

142 To interrogatory IX he answers: Yes; there was plenty of water.

To interrogatory X he answers: He did largely. Judging from & by the comparrison with the business done by the boat the previous season, I should think his lossess would amount to from $8,000 to $10,000. I find that the receipts of the boat during the same time last year amounted to $6,060.12; during the time corresponding with that during which the trips this season were lost in consequence of said obstruction. I find also that the additional port & wharf charges occasioned by said obstruction in causing said boat to lay up, amounted to $290.83, and that other losses & expenses amounted to over $1,200. How much the actual losses of the boat were from opposition resulting from the obstruction amounted to I do not know—am satisfied it was a large amount.

To interrogatory XI he answers: Yes, he did; he demanded the removal of the bridge twice.

143 To interrogatory XII he answers: He did; on the 10th November, 1880, and 21st November, 1880. The demand was made in writing after Captain Hamilton had consulted Singleton & Brown, lawyers, in New Orleans.

The document annexed is the original letter which was written by Mr. Singleton for Captain Hamilton to make his demand. (The bridge should have been repaired in the summer when the water was low; the company had plenty of time to do it; every one knows there was no need for interfering with navigation.)

Cross-interrogatories:

To cross-interrogatory 1 he answers: I am clerk of the Era No. 10; I was not clerk on the boat last season.

To cross-interrogatory 2 he answers: I am not.

To cross-interrogatory 3 he answers: I was, but not for the season of 1879 & 1880.

To cross-interrogatory 4 he answers: The books of the boat, which are now in my charge, show that she made eleven trips during that season.

144 To cross-interrogatory 5 he answers: I find from the boat's books that she carried out 5,349 bales of cotton; the season of 1879 opened January 24, 1880.

To cross-interrogatory 6 he answers: None.

To cross-interrogatory 7 he answers: None.

To cross-interrogatory 8 he answers: Three-fifths above and two-fifths below the bridge.

To cross-interrogatory 9 he answers: She was insured for three thousand dollars; I do not know what her value is.

To cross-interrogatory 10 he answers: Six years.

To cross-interrogatory 11 he answers: The season of 1875 and 1876 opened on the 18th day of September, 1875; the season of 1876 &
1877 opened on the 23rd day of January, 1877; the season of
145 1877 & 1878 opened on the 10th day of November 1877; the season of 1878 & 1879 opened on the 11 day of December, 1878, and the season of 1879 & 1880 opened on the twenty-fourth day of January, 1880, and the season of 1880 & 1881—that is, the present season—opened on the 6th day of November, 1880. I find the above date from a reference made to the books of the boat which, as I have stated, are in my charge as clerk of said boat as I was not on the boat during the whole of those seasons, as stated; the books are correctly kept.

J. P. MOHR.

Answers of R. M. Faust. Filed Ap'l 11, '81.

R. M. FAUST, witness, of lawful age, answers as follows, to wit:

To interrogatory I he answers: I do. I do not know definitely; I know he has been known as the owner several years.

To interrogatory II he answers: In the Boeuf river trade several years.

To interrogatory III he answers: There was. Since the fall of 1880 a boat has been put in opposition. The cause of this
146 opposition was the dissatisfaction of shippers by the Era No. 10, because Captain Hamilton did not by force remove the bridge put across the river by the railroad.

To interrogatory IV he answers: I was a pilot on her.

To interrogatory 5 (V) he answers: Two attempts were made by her in November, 1880; was prevented by the bridge put across the river by the railroad company. The bridge was stationary.

To interrogatory 6 he says and answers: There was a stationary bridge which had openings; it was placed across the river by the defendant.

To interrogatory 7 he says & answers: There was by defendant, for the sole benefit and use of the railroad. We first knew about the obstruction on the 6th November, 1880; the interruption lasted till Dec. 22, 1880.

To interrogatory 8 he answers: Yes; two attempts were
147 made & then the boat laid up; if it had — been for the bridge obstructing the river at least four trips could have been made.

To interrogatory 9 he answers: Yes, there was plenty water.

To interrogatory 10 he answers: I have nothing to do with the office or books of the boat, & therefore can't give the amount of loss. I know, however, that the boat lost a great deal of money on account of the obstructions, from lying up, loss of business, & op-

position on account of hard feelings of merchants & shippers for not tearing down the bridge.

To interrogatory 11 he answers: Yes, he did; he made the demand twice to have [the] bridge removed.

To interrogatory 12 he answers: Yes, twice in November, 1880. The demand was made in writing. The annexed is a copy of the demand made on the defendant. (The bridge could have been repaired in the summer, when the water was low.)

148 *Answers of Faust to Cross-Interrogatories.*

Cross-interrogatories:

To cross-interrogatory 1 he answers: I am a pilot.

To cross-interrogatory 2 he answers: Yes, a pilot.

To cross-interrogatory 3 he answers: The first trip of the season of 1879 & 1880 was made on the 24th day of January, 1880.

To cross-interrogatory 4 he answers: None. She did not run because there was not water enough water in Boeuf river to enable her to run, and for that reason she did not make her first trip until the 24th day of January, 1880, of the season of 1879 & 1880, as I have before stated.

To cross-interrogatory 5 he answers: I have not the slightest interest in this suit.

R. M. FAUST.

149 *Answers of Jno. Pully. Filed Ap'l* 11, '81.

JOHN PULLY, witness of lawful age, answers.

To interrogatory I he answers: I do. He has been known as an owner several years; don't know how many.

To interrogatory II he answers: For several years in the Boeuf river trade.

To interrogatory III he answers: There was; since fall of 1880 a boat has been put in opposition. The cause of this opposition was that the shippers on the Era No. 10 were not satisfied with Captain Hamilton, because he did not remove the bridge which had been put across the river by the railroad company by force.

To interrogatory 4 (IV) he answers: I was a pilot on her.

To interrogatory V he answers: Two attempts were made in November, 1880. The stationary bridge put across the river by the railroad company prevented.

To interrogatory VI he answers: There was a stationary bridge without openings put across the river by the railroad company.

150 *Interrogatories Answered.*

To interrogatory 7 he answers: There was by the railroad company for its own use & benefit. We knew about the obstruction for the first time on November 6th, 1880. We did not get through till December 22, 1880.

To interrogatory 8 he answers: Yes; two attempts were made &

then boat was laid up. We could have made four trips if the bridge put across the river had not prevented navigation.

To interrogatory 9 he answers: Yes, there was plenty of water.

To interrogatory 10 he answers: As I have nothing to do with the business of the boat, I cannot state what the amount of losses were. All I know is that the boat did lose a large amount from loss of business, opposition, &c., caused by the bridge being put across the river, and thereby preventing the boat from making her reg-
151 ular trips, besides she had to be laid up for some time on account of the same.

To interrogatory 11 he answers: He did; made two demands to have same removed.

To interrogatory 12 he answers: Yes; twice in November, 1880, demand was made by Capt. Hamilton, in writing. The copy of the letter annexed was served on the railroad company. There was no need of stopping navigation to repair the bridge, as the repairs could have been made in the summer when the water was low.

Cross-interrogatories:

To cross-interrogatory 1 he answers: I am a pilot.

To cross-interrogatory 2 he answers: Yes; as pilot.

To cross-interrogatory 3 he answers: First trip was made on 24 Jan., 1880.

To cross-interrogatory 4 he answers: None; she did not run,
152 because there was not sufficient water in Boeuf river to enable her to run. Her first trip for that season was made on the 24 January, 1880.

To cross-interrogatory 5 he answers: I have no interest whatever in this suit

JOHN R. PULLY.

I further certify that the foregoing answers were reduced to writing by me, notary, and that said witnesses signed their respective answers in my presence.

In faith whereof I hereunto set my hand and seal the 6th day of April, A. D. 1881.

J. BENDEMAGEL,
Not. Pub.

Letter. Hamilton to Boyd. Annexed to Depositions.

NEW ORLEANS, LA.

Mr. G. S. Boyd.

DEAR SIR: I demand to pass the works you have erected in the Boeuf river for the alleged purpose of building a railroad bridge across the same. You have unnecessarily, and therefore ille-
153 gally, obstructed the navigation of said river to the great damage of myself and all parties living on or near said river who use the same as a channel of commerce, and on your failure to allow me to pass with my boat in pursuance of her ordinary business I and all the parties interested will hold you and the railroad

for which you are acting responsible for all damages we may suffer by reason of your illegal acts.

JAMES HAMILTON.

Jordan to Hamilton. Postal Card, Oct. 5th. Filed 13 April, '82.

TRIO, *Oct.* 5.

Capt. James Hamilton:

Plenty of water, and heavy rains continuing. Come up at once. But little cotton has been shipped from this country. Let me hear from you, and I will keep my cotton if you can be here at certain time.

W. T. JORDAN.

Letter from Vickers to Hamilton. Filed April 13, '82.

RAYVILLE, LA., *Dec. 6th*, 1880.

Capt. James Hamilton, New Orleans, La.

DEAR SIR: We would be glad [if] you would come up in
154 time to make another trip before Christmas, as most people want to send down some orders for Christmas. Telegraph us when you come, so people will get their cotton out on the river. Try and not be above on Sunday, as this would keep back a good deal of cotton from being hauled in.

I have heard that they could open the bridge now, but do not know how true it is. It has been raining nearly all the time since you were here.

If it is fair this week there will be a good deal of cotton ready by Saturday. I think there is about one hundred bales at Alto now. If the signal office report cold weather at Cairo when you leave bring me a barrel of oysters in shell.

If you can get me any pickers or wood-choppers bring me some. I want three or four men to chop wood and as many cotton-pickers as I can get. Bring me some seed sacks. Put me off one hundred sacks at the Thompson Crook gin, opposite May's. We have the first bright morning we have had since just after you went down.

River is gettiug pretty well up the banks. I think there
155 will be no doubt but what the Oak Ridge cotton will be held for you, as the roads are all most impassable. Dr. Rush says cotton is accumulating at Eason's. Capt., if you do go through I want you to be certain to save room for me for fifty bales of cotton, as I have some paper I must meet.

Hope you will have a good trip next time.

Yours, respectfully,

H. F. VICKERS.

Letter. Duff to Hamilton. Filed April 13, '82.

ALTO., LA., *Dec. 14th*, 1880.

Capt. James Hamilton, New Orleans, La.

DEAR FRIEND: Your delay has caused a great deal of dissatisfac-

tion here; parties are writing for another boat; &, if one should come, you would lose a many friend in the lower trade. Parties have written for the Rosa B. Get all of my freight at John I. Adams & Co.

I remain, your friend, W. H. DUFF.

156 *Letter. Davis & Others to Hamilton. Filed Ap'l* 13, 1882.

OAK RIDGE, LA., *Nov.* 10*th*, 1880.

Capt. James Hamilton (Era No. 10), New Orleans.

DEAR SIR & FRIEND: Madam Rumor says you have sold out your interest in Boeuf river above the R. R. bridge to the r'road. Capt., I have denied this report—or, rather, I deny believing it. The merchants here and citizens throughout the country are very indignant at such acts of yours, if true. You have a host of friends here that don't believe this report, although we heard that Major Green, of this road, went to N. O. to see you about it, and I don't know as to the truth of this. We had a hope that you would remove the obstruction the first trip, but think you left orders for a passway next trip, otherwise you would force the way yourself. We look for you next trip, if we have water, & will haul cotton to Eason's & store for you. Hope you will take due notice, Capt., and govern your interest accordingly, or steps will be taken for another boat.

Yours, very truly,

J. WM. DAVIS.
J. M. SHARP.
MEYER & BAER.
157 JNO. JONES.
J. F. MADISON.
LEROY E. LEE.
J. E. McGOWAN.
JNO. F. BYRNE.
T. W. BAIRD.
W. H. HAMPTON.

Capt., many names would appear if presented to parties. I only sen- a few that you may be posted as to reports, &c., while we deny the report some believe it, & think you care only for Capt. Hamilton. All well.

I am, truly, your friend and well-wisher,

J. WM. DAVIS.

Letter. Eason to Hamilton. Filed Ap'l 1, '82.

EASON'S FERRY, *Dec.* 13, 1880.

DR. JIM: I have just received yours of the 1st & 6 this day, and will say that I was down to the railroad bridge yesterday to see when it would be done; the contractor said it would be done the 18th, & Boyd promised to let you know a few days before so that you could start out and be here about the time it opened;
158 but Jim, I am sorry to say if it don't rain before then, the water will be too low to get here. If you could get here I

would have about 500 B | C & perhaps more. John Jones, who lives with Hefner, & I counted up that amount, and, of course, there will be others who will have cotton to ship we know nothing about so far. Mr. H. & Whitstone are now hauling to the railroad every day and you can see how we are losers by that infernal road, but, as you say, I live in hopes. I want it to keep clear a few days, then rain enough to keep the water up. If you could have passed the bridge you could have made every trip to Eason's Ferry. I have let Davis see your letter of the 6th, as you requested.

Hoping to see you soon, I am your friend,

C. W. EASON.

Interrogatories to Jordan, Balfour, Duff, — McVickers. Filed 22 Mar. 1881.

JAMES HAMILTON
vs.
THE VICKSBURG, SHREVEPORT & PACIFIC RAILROAD COMPANY. } 1655.

Interrogatories to be propounded to Dr. T. W. Jordan, Charles Balfour, W. H. Duff, and H. F. McVickers, of Rich-
159 land parish, Louisiana, the answers to which are to be read in evidence on the trial of this case on behalf of the plaintiff.

1st. Are you acquainted with the plaintiff in this suit? How long have you known him? What is his business or occupation? What steamboat has he been running in the Boeuf river between Eason's Ferry and New Orleans in 1879 & 1880?

2nd. Do you know whether or not the plaintiff was prevented from going to Eason's Ferry on Boeuf river, in the fall or winter of 1880 with his steamboat? What steamboat did he try to take to Eason's Ferry? When & how often?

3rd. Was there enough water in the river to enable him to take his steamboat, Era No. 10, to Eason's Ferry when he brought her to the railroad bridge across Boeuf river?

4th. Is, or is not, Boeuf river generally or frequently navigable to Eason's Ferry or above the bridge in the fall of the year?

5th. What prevented plaintiff from reaching Eason's Ferry? Was there any obstruction to the free navigation of the river? What was the obstruction? Who placed it there, or caused it to be
160 placed there?

6th. Was there any cotton ready for the Era No. 10 to take above the railroad bridge when she was prevented from going to Eason's Ferry in the fall or winter of 1880? Was any of the cotton which she would have carried shipped on the railroad or not? What was the price per bale of shipping by boat? What by mail?

7th. Were or were not the merchants and planters above the bridge and in the neighborhood of the river, indignant at the plaintiff because he did not forcibly remove the obstructions to the free navigation of the river?

8th. Did they, or some of them, or did they not, induce another steamboat to be brought into the trade, and did they or not patronize said boat in preference to the Era 10, because of the failure of

the plaintiff to go to Eason's Ferry in spite of the obstacle to the navigation placed in the river by the defendant?

9th. Has the plaintiff been damaged or suffered loss by being prevented by the bridge of defendant from navigating Boeuf river
161 freely in the fall or winter of 1880? State to what extent he has been damaged and in what the loss consisted?

10th. How long was defendant in building its drawbridge? How long was the free navigation of Boeuf river obstructed by defendant?

11th. Is or is not Boeuf river a navigable stream, and how high up said river do boats generally run?

12th. State anything else you may know that may benefit the plaintiff in this suit.

JNO. T. LUDELING, *Att'y.*
JNO. H. DINKGRAVE, *Att'y.*

7th Inter. objected to as being irrelevant and properly an element of damage.

8th on the same ground; 12th, that all other legal objections reserved, it is too general to admit of crossing.

Service accepted and delays for crossing waived.

BOATNER & LIDDELL,
Of Counsel.

Cross-Interrogations to Jordan, Balfour, Duff, & Vickers. Filed 22d Mar., 1881.

HAMILTON *vs.* V. S. & P. R. R. Co.

Defendants propound the following cross-interrogations to
162 the witnesses, W. S. Jordan, Charles Balfour, W. H. Duff, & H. F. McVickers, of Richland parish, reserving the special objections hereinafter noted and all legal objections:

1st. Do you reside above or below the bridge on Boeuf river? How long have you resided on Boeuf river?

2nd. At what time in the year does that stream usually become navigable?

3rd. How much cotton did you have prepared and ready for market of the crop of 1880 prior to the 20th Dec.?

4th. How much did you ship by the railroad prior to that time which you would have shipped on the steamboat but for the obstructions to the navigation by the repairs of the bridge?

5th. Was not the season of 1880 very unpropitious for gathering and preparing cotton for market?

6th. Did not the river rise at an unusually early period in the fall?

7th. Was not the weather very unfavorable for any kind of outdoor work?

8th. Do you know how many bales of cotton plaintiff carried at each trip that he made in the fall of 1880 prior to the 20th December?

9th. How many trips did he make prior to that time?

163 10th. Was there any reason why parties living below the bridge should not have shipped by plaintiff if they preferred to do so?

11th. Could not parties who hauled cotton to Girard for shipment by the R. R. have shipped by the boat at that point if they had so desired?

12th. If, in answer to the direct 6th interrogatory you say that there was cotton ready for the Era No. 10 above the bridge when she was prevented from going above the bridge by obstructions in the stream, state how much there was, by whom held, so far as you know, and how much of it was shipped by the railroad which would otherwise have been shipped by the steamboat.

13th. If, in answer to 9th direct int'y, you state that plaintiff has been damaged by the obstruction of the river by defendants, state your means of knowledge, and the particulars of damage.

14th. Was the river navigable the entire time the railroad bridge was undergoing repairs & the draw not in position?

BOATNER & LIDDELL,
Of Counsel for Defendants.

164 *Commission.*

The State of Louisiana to any judge or justice of the peace or qualified officer in the parish of Richland, Greeting:

Know ye that reposing special trust in your fidelity and provident circumspection, we do hereby authorize and require of you to cause to come before you Dr. T. W. Jordan, Charles Balfour, W. H. Duff, and H. F. McVickers, and do you them examine on their oaths or affirmation touching their knowledge in a certain suit now pending in the fifth district court in and for the parish of Ouachita, State aforesaid, wherein James Hamilton is plaintiff and the Vicksburg, Shreveport & Pacific R. R. Co. is defendant, and their answers to the annexed interrogatories so taken do you certify the same, and enclose and send them to the clerk of said court at the town of Monroe, in order that the same may be read in evidence on the trial of said cause; also enclose and send this commission on or before the 1st Monday of April next, 1881, that being the 1st day of the next term of said court.

165 Witness the Hon. R. W. Richardson, judge of said court, this 23rd day of March, 1881.

AUSTIN GREEN,
Clerk of the 5 Judicial District Court, Parish of Ouachita.

STATE OF LOUISIANA, *Parish of Richland:*

Be it known and remembered that J. E. D. Montgomery, a justice of the peace of the 2nd ward, of the parish of Richland, acting under and by virtue of the commission hereto annexed, did on the 29th day of March, 1881, cause H. F. Vickers to come before me, he being one of the parties named in said commission, and having first sworn him, according to law, did examine him, on oath, touch-

ing his knowledge in the suit mentioned in the annexed commission, and did then and there write down his answers to the interrogatories and X-interrogatories annexed to the aforesaid commission, and cause him to sign the same, which said answers are as follows:

Answers of H. F. Vickers. Filed Ap'l 9, '81.

To interrogatory 1st he says: I am acquainted with the plaintiff in this suit. I have known him since 1867. Era No. 10.

166 To interrogatory 2nd he says: I know that he made an effort to take the Era No. 10 to Eason's Ferry in the fall of 1880 two or three times, but could not go on account of the obstructions in the river at the railroad bridge.

To int. 3rd he says: There was water enough in the river to enable him to take his boat to Eason's Ferry at that time.

To int. 4th he says: Boeuf river is frequently but not generally navigable in the fall as far up as Eason's Ferry.

To int. 5th he says: The obstruction of the draw of the railroad bridge prevented plaintiff from reaching Eason's Ferry.

There was obstructions, the railroad being unable to open the draw. I don't know who caused the obstruction to be placed there.

To int. 6th he says: I heard several planters say that they had cotton for shipment. I can't say whether it was shipped by rail or not; the price by boat was $1.50 and $2.50 by rail.

167 To int. 7th he says: I understand such to be the case.

To int. 8th he says: I can't answer this question; I do not know.

To int. 9th he says: I consider that he was damaged by not being able to go above the railroad bridge. I consider that he was damaged at least three thousand dollars by losses incurred in plying up and down the river without full trips, in making the trip in a shorter period of time than it usually took him. The planters below the railroad did not have time to get as much cotton ready as they would have done each trip if the boat had been making through trips, and the entire cutting off of the freights on the upper side of the railroad. Eason's ferry is one of the most lucrative shipping points on the river.

To int. 10th he says: I don't know how long it took them to build the draw-bridge. Navigation was suspended some two months, I think. I cannot say definitely, as I gave the matter no thought.

To int. 11th he says: Boeuf river is a navigable stream

168 Boats run about one hundred miles above the railroad by the river.

To int. 12th he says: I know nothing more.

Answers of Vickers to Cross-Int'g's.

To cross-int. 1st he says: I reside below the bridge; have lived near Boeuf river 26 years.

To cross-int'y 2nd he says: 1st of December.

To cross-int'y 3rd he says: About seventy bales.

To cross-int'y 4th he says; I hauled none to the railroad after the rainy season set in.

To cross-int'y 5th he says: It was.
To cross-int'y 6th he says: It rose earlier than general.
To cross-int'y 7th he says: It was.
To cross-int'y 8th he says: I don't know; he did not have full trips.
To cross-int'y 9th he says: I can't say certain.
To cross — 10th he says: None save that he did not make regular trips on account of the sparcity of freight.
169 To cross-int'y 11th he says: I presume they could, but they had no warehouse to store it in.
To cross-int'y 12th he says: I can't say who had cotton, or how much there was.
To cross-int'y 13th he says: *I* means of knowledge is that I saw the manifest of each down trip, & saw the boat on her up trips, and, having been engaged in steamboating, I know that the curtailing of the freight-lists by the loss of the freights of the upper portion of the river must have amounted to my estimate of the damages as stated in my answer to direct int'y 9.
To cross-int'y 14th he says: I don't know when the work on the draw commenced.

H. F. VICKERS.

Sworn to & subscribed before me, this March 29th, 1881.
E. C. MONTGOMERY, *J. P.*

I, E. C. Montgomery, justice of the peace of the 2nd ward of Richland parish, certify that I caused H. F. Vickers to appear before me at the time and place above mentioned, and that he
170 was sworn, and answered as above set forth; that I reduced his answers to writing, & caused him to sign the same.
Witness my signature officially this March 29th, 1880.
E. C. MONTGOMERY,
2nd Ward, Richland Parish.

Answers of Balfour. Filed Ap'l 9th, 1881.

Depositions of CHARLES P. BALFOUR, sworn & examined on April 8th, 1881, under & by virtue of the annexed commission, at my office, in the town of Rayville, La., who, being first duly sworn, in answer to the interrogatories propounded by plaintiff and cross-int'ys propounded by defendant, did depose & say [as] follows:

To int'y 1st he says: I am; about ten years; captain of a steamboat & owner; Era No. 10.
To int'y 2nd he says: I know he was prevented from going to Eason's ferry at the time mentioned. The Era No. 10. I think, in November & December; he tried three times.
To int'y 3rd he says: I think there was. I know there was
171 enough one time.
To int'y 4th he says: It is frequently navigable in the fall to Eason's ferry.
To int'y 5th he says: He could not get through the railroad bridge;

they were building a new bridge, or repairing the old one. The railroad company (V., S. & R. R. R. Co.) was the cause of the obstruction.

To int'y 6th he says: There was cotton ready for the Era No. 10 above the bridge. Some of it was shipped by the railroad; price by boat was $1.50; by rail, $2.50.

To int'y 7th he says: They were indignant at the R. R. Co.

To int'y 8th he says: I can't answer; I know another boat did come in, and a good many patronized her.

To int'y 9th he says: I think he has been damaged, but I can't say how much. I think he lost up freights and freights, on 300 or 400 bales of cotton down each trip, which would probably amount to seven or eight hundred dollars each trip.

172 To int'y 10th he says: I don't remember; I think two or three months.

To int'y 11th he says: It is; they go up to P't Jefferson and to Eason's ferry.

To int'y 12th he says: I don't know of anything.

Answers of Balfour to Cross-int'ys.

To cross-int'y 1st he says: Above; about twenty years.

To cross-int'y 2nd he says: Generally about the last of November or Dec. 1st.

To cross-int'y 3rd he says: About (50) fifty bales.

To cross-int'y 4th he says: Fifty bales.

To cross-int'y 5 he says: I- was after the 10th of November.

To cross-int'y 6th he says: It rose earlier than usual.

To cross-int'y 7th he says: It was after November the 10th.

To cross-int'y 8th he says: I don't know. I think she carried very little.

To cross-int'y 9th he says: I think it was three.

To cross-int'y 10th he says: None that I know of.

173 To cross-int'y 11th he says: They could have hau-ed it to the river bank for the boat, but there was no warehouse at or near the bridge, & the cotton would have been exposed to the weather and liable io have been stolen.

To cross-int'y 12th he says: I had cotton; and Dr. Jordan, Thos. Jones, Whitestone, Heffner, Davis, and a good many other parties had cotton. I think my estimate that she lost 300 or 400 bales each trip (which was afterward shipped by rail) is a low estimate.

To cross-int'y 13th he says: I have answered as fully as I can, in answer to direct interrogatory 9, my means of knowledge was from seeing some of the cotton, & from hearing my neighbors say how much they had.

To cross-int'y 14th he says: It was not.

C. P. BALFOUR.

Sworn to and subscribed to before me this 8th day of April, 1881.

E. C. MONTGOMERY, *J. P.*

174 I, E. C. Montgomery, a justice of the peace of the 2nd ward of the parish of Richland, do certify that I caused H. F. Vickers & Charles

P. Balfour, witnesses hereinbefore named and examined, to appear before — at the time and place above mentioned, and, after swearing them to tell the truth, in answer to the annexed interrogatories & cross-interrogatories, I then propounded to each of them the direct and cross-interrogatories, and, in the presence of each witness, I reduced their answers to writing and caused each of said witnesses to sign his deposition in my presence.

In testimony whereof I have hereunto signed my name officially on this April 8th, 1881.

E. C. MONTGOMERY,
J. P. 2nd Ward, Richland Par.

Charges of executing commission----	7 50
Cost of summoning witnesses--------	2 50
	$10 00

Interrogatories to C. W. Eason, Leroy Lee, J. W. Davis, Jno. Jones, Jr., J. M. Sharp, T. M. Baird, & M. Larkin. Filed Mar. 22nd, 1881.

175 JAMES HAMILTON
vs.
THE VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 1655.

Interrogatories to be propounded to C. W. Eason, Leroy Lee, J. W. Davis, John Jones, Jr., J. M. Sharp, S. M. Baird, and Milton Larkin, of Morehouse Parish, Louisiana, the answers to which are to be read in evidence, on the trial of this case, on behalf of plaintiff.

1st. Are you acquainted with the plaintiff in this suit? How long have you known him? What is his bussiness or occupation? What steamboat has he been running in Boeuf river between Eason's ferry and New Orleans in 1879 and 1880?

2nd. Do you know whether or not the plaintiff was prevented from going to Eason's ferry on Boeuf river, in the fall or winter of 1880, with his steamboat? What steamboat did he try to take to Eason's ferry? When and how often?

3rd. Was there enough water in the river to enable his boat, Era No. 10, to go to Eason's ferry when he brought her to the R. R. bridge across Boeuf river?

4th. What prevented him from reaching Eason's ferry?

176 Was there any obstruction to the free navigation of the river? What was the obstruction? Who placed the obstruction in the river, or who caused it to be placed there?

5th. Was there cotton ready for the Era No. 10 to take above the railroad bridge when she was prevented from going to Eason's ferry, in the fall or winter of 1880? Was any of the cotton which she would have carried shipped on the railroad, or not? What was the price per bale for shipping by rail? What by boat?

6th. Were or were not the planters and merchants above the bridge in the neighborhood of the river indignant at plaintiff because he did forcibly remove the obstructions to the free navigation of the river?

7th. Did they or some of them, or did they not, induce another steamboat to be brought into the trade, and did they or did they not patronize the said boat in preference to the Era No. 10, because of the failure of the plaintiff to go to Eason's ferry in spite of the obstacle to the navigation placed in the river by the defendant?

8th. Has the plaintiff been damaged or suffered loss by
177 being prevented, by the bridge of defendant, from navigating Boeuf river freely in the fall or winter of 1880? State to what extent he has been damaged, and in what consisted the loss.

9th. How long was the defendant in building its draw-bridge? How long was the free navigation of Boeuf river obstructed by defendant?

10th. Is or is not Boeuf river a navigable stream? How high up said river do boats generally run?

11th. State anything else you may know that may benefit plaintiff in this suit. Is or is not Boeuf river generally or frequently navigable in the fall of the year?

JNO. T. LUDELING, *Att'y.*
JNO. H. DINKGRAVE, *Att'y.*

6th interrogatory objected to as not relevant, and as not being properly an element of damages.

7th on same ground. All other legal objections reserved and delays waived and service accepted.

BOATNER & LIDDELL,
Of Counsel for Defendant.

178 *Cross-Interr'g's to Eason, Lee, et al. Filed 22d Mar.*, 1881.

HAMILTON *vs.* T. V., S. & P. R. R. Co.

Defendant propounds the following cross-interrogatories to C. W. Easton, Leroy Lee, J. W. Davis, J. M. Sharp, T. M. Baird, & Milton Larkin, of Morehouse parish, subject to the objections to their testimony already reserved:

1st. If you state that plaintiff was prevented from bringing a steamboat to Eason's Ferry in the fall of 1880 by obstructions in the Boeuf river, state when those or that obstruction was first placed there.

2nd. Was the river at a navigable stage of water at that time?

3. How long after such obstruction was placed in the river before it became navigable?

4th. Did the river remain at a navigable stage during the entire time the repairs on the bridge at Girard were being made, & while the draw could not be used?

5th. How much cotton did you ship by the railroad from the 10th November, 1880, to the 20th December of that year, and how much did other parties so ship, to your knowledge; who were they?
179 6th. If any, to what point did you haul it for shipment?

7th. At what date or season of the year does the navigation of Boeuf river usually open? Did not it open at an unusually — date in 1880?

8th. Was much cotton of the crop of 1880 ready for shipment prior to the 20th Dec. of that year?

9th. Was not the weather very unfavorable to picking cotton up to that time?

10th. Was not the bulk of the crops produced in 1880 made ready for market after the 20th Dec. of that year?

BOATNER & LIDDELL,
Of Counsel for Deft.

Commission.

The State of Louisiana to any judge or justice of the peace in the parish of Morehouse, Greeting:

Know ye, that reposing special trust in your fidelity and provident circumspection, we do hereby authorize and require of you to cause to come before you W. J. Summerlin, and do you him
180 examine on his oath or affirmation touching his knowledge in a certain suit now pending in the 5th district court in and for the parish of Ouachita, State aforesaid, wherein James Hamilton is plaintiff, and the Vicksburg, Shreveport & Pacific R. R. Co. is defendant, and his answers to the annexed interrogatories, so taken, do you certify the same and enclose and send them to the clerk of said court, at the town of Monroe, in order that the same may be read in evidence on the trial of said cause; also enclose — send this commission on or before the fourth Monday of January next, 1881, that being the first day of the next term of said court.

Witness the Hon. R. W. Richardson, judge of said court, this 28th day of November, 1881.

AUSTIN GREEN,
Clerk of the 5th Judicial District Court, Parish of Ouachita.

THE STATE OF LOUISIANA, *Parish of Morehouse:*

JAN'Y 2ND, 1882.

To the Hon. Judge R. W. Richardson, of the 5th district court for the parish of Ouachita:

181 In submission to your honor's command, I have taken the interrogatories of C. W. Eason, J. M. Sharp, M. K. Larkin, J. W. Davis, L. E. Lee, John Jones, and S. W. Baird — after their being duly sworn, did make the answers as found in their interrogatories on the day and date therein written. Certified to and subscribed before me, W. J. Summerlin, justice of the peace in and for the 5th ward of the parish of Morehouse, State of Louisiana.

W. J. SUMMERLIN, *J. P.*

Magistrate's cost for issuing subpœnas and taking interrogatories of seven men, at 12 each, $10.50.

Please collect or have Charley Trousdale to collect the above bill and forward the amount to me, & oblige.

Jan'y 2nd, 1882.

W. J. SUMMERLIN, *J. P.*

Answers of C. W. Eason. Filed Ap'l 13, '82.

JAMES HAMILTON
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } 1655.

Answer to inf. 1st by C. W. Eason: Yes; I am acquainted with plaintiff; have known him for 20 years; have always known
182 him as a steamboatman; he has been running the steamboat Era No. 10, as captain or master, since 1879, beginning with the business season of that year in the fall, running between Eason's Ferry and New Orleans.

Answer to int. 2: Yes; the steamboat Era made the first trip as far as the railroad bridge, on Boeuf river, and the capt., Hamilton, plaintiff, made a demand of the agent, G. S. Boyd, at Girard, to open the bridge, and he refused to do so; this was the 9th day of Nov., 1880, and was prevented from passing four or five trips from the 9th Nov. to Jan'y, 1881.

Answer to int. 3rd. Yes; I think there was enough every trip for four trips.

Answer to int. 4th. The obstructions in the river, which was piling driven about every 6 or 7 feet entirely across the stream—the obstructions were placed there by the contractor, a Mr. Rainbolt.

Answer to int. 5th. Yes; but I don't know how much there was first trip above the bridge, but I would have had about 200
183 bales of cotton first trip at my warehouse, Eason's Ferry. The cotton was all shipped by railroad between the 9th Nov., 1880, to the 26 Jan., 1881. The price of freight on the cotton by railroad was $2.50 per bale. I think there was about twelve hundred B. C. shipped by railroad, which would have been shipped S. B. Era had she not been prevented by obstructions in the river from coming to Eason's Ferry.

Answer to int. 6th. Yes; there was a great fault found of plaintiff because he did not forcibly remove the obstructions out of the river.

Answer to int. 7th. They tried to induce another boat, but failed to get one.

Answer to int. 8th. The plaintiff was damaged to a considerable extent, but I don't know how much he was damaged by not getting the cotton & the up freights, which was very heavy up freights that fall.

Answer to int. 9th. The obstructions were put in the river,
184 I think, in August, 1880, and was not taken out until the 26th January, 1881, or thereabout. I suppose they were building the bridge during that time.

Answer to int. 10th. Yes; it is a navigable stream.

Answer to int. 11th. I think plaintiff's character was damaged as a steamboatman.

Answer to int. 12th. No; not generally navigable in the fall, though it was the fall previous about the same date.

C. W. EASON.

Sworn to and subscribed before me, this the 19th December, 1881.

W. J. SUMMERLIN, *J. P.*

JAMES HAMILTON *vs.* THE V., S. & P. RAILROAD.

Answer to int. of defendants No. 1. The obstructions were placed there before the 9th November, 1880, at which time the steamer made her first trip to the bridge.

Int. 2nd. The river was navigable at that time.

185 Int. 3rd. About six weeks or more.

Int. 4th. Yes; it remained navigable the entire time.

Int. 5th. I shipped no cotton by railroad, but there was about 1,200 bales hauled by my ferry that would have been shipped by boat if there had not been obstructions in the river at the railroad. This was hauled by the shippers generally.

Int. 7th. It does not become navigable usually in the fall, but it was that fall & the fall before.

Int. 8th. There was about 200 bales ready to be shipped from Eason's Ferry the *the* first trip, and about 1,200 bales from the 9th Nov., 1880, to Jan'y 26th, 1881.

Int. 9th. Yes; it was very unfavorable.

Int. 10th. Yes; I think so.

C. W. EASON.

Sworn to and subscribed before me this the 19th day of December, 1881.

W. J. SUMMERLIN, *J. P.*

186 *Agreement with Rainbolt. Copy. Filed Ap'l 14th, '82.*

MONROE, LA., *May 20th*, '80.

Memoranda of agreement between J. H. Rainbolt and J. W. Green, gen'l manager Vicksburg, Shreveport and Pacific R. R'd, to wit:

The said J. H. Rainbolt agrees to furnish the material, excepting iron work, and construct the draw-bridge across Boeuf river on line of said V., S. & P. R. R. in accordance with plan prepared. The material used for the superstructure, viz., chord, timber braces, floor beams, tower frames, and segments on which circular track is laid, to be of the best quality of cypress lumber, all heart, and free from knots or wind shakes, the lumber to be dressed, the joints laid in white lead, and all the portions of the bridge in which dressed lumber is used to be painted with three coats of paint of white lead and linseed oil. The track stringers, guard rails, and all of the lumber used for the pier and abutments (not dressed) to be of sound cypress lumber as free as possible of sap and knots.

187 Contract price as follows: Material used thirty feet and under in length fifteen (15) dollars per thousand feet, board measure; material over thirty feet in length twenty-two and $\frac{50}{100}$ dollars ($22.50) per thousand feet, board measure; for dressing, painting, framing, & erecting superstructure, viz., the Howe truss draw, twenty-three hundred & fifty dollars ($2,350). For pier & abutment work framed & in position (including cost of

material) forty dollars, ($40.00) per thousand feet, board measure. For cypress piles for pier and abutments, viz., the material and driving same forty-five cents per cubic foot.

Temporary Work.

As far as practicable old material in present pier and abutments will be used in erecting a safe trestle for the passage of trains during the progress of the new work. Where new material is necessary good cypress lumber, to be afterwards utilized for other purposes, will be used. For piles driven, cost of new material included, forty-five cents per cubic foot. For new lumber used in trestle, fifteen dollars ($15.00) per thousand. For framing, erecting, and afterwards removing same, fifteen dollars ($15.00) per thousand feet, board measure. Lumber used for the work to revert to the R. R. Co.

188 For removing and dismantling old drawbridge, including the removal from old structure all of the iron work & piling up the same near track, one hundred dollars ($100).

The railroad company will furnish free transportation for lumber for the work—loading and unloading same to be done by contractor—monthly payments to be made as the work progresses, less twenty per cent. retained until completion of contract, when full payment in cash will be made.

The work to be done in a thorough and workmanlike manner, to the full satisfaction of the gen'l manager of aforesaid railroad.

The work of framing the superstructure to be commenced without delay, and that of framing & erecting pier & abutments as soon as the water subsides sufficiently to prepare the foundations.

The entire work to be completed with all possible dispatch.

(Signed) J. H. RAINBOLT.
(Signed) J. W. GREEN, *Gen'l Manager.*

Witness:
(Signed) N. N. COE.
(Signed) G. A. PRESTON.

189 I certify that the within & foregoing is a true and correct copy of the original as read to the jury in this case.

Witness my hand and seal of office this 14th April, 1882.

AUSTIN GREEN,
Clerk D. C.

Notice of Interrogatories to J. W. Green. Filed 15th Sept., 1882.

STATE OF LOUISIANA, *Parish of Ouachita:*

5th District Court.

JAMES HAMILTON
vs.
THE VICKSBURG, SHREVEPORT & PACIFIC RAILROAD CO. } No. 1655.

To James Hamilton, of the parish of Orleans and State aforesaid:

You are hereby notified that the defendant in the above-entitled

suit has filed in the office of the clerk of the above court at Monroe interrogatories propounded to John W. Green, of Augusta, Richmond county, Ga., a true copy of which interrogatories will be served upon you, together with this notice, to enable you to make any exception or add any cross-interrogatories thereto, and at the expiration of three entire days after the service hereof the said interrogatories will be forwarded, together with a commission to take the answers of the said witness to the same.

Witness my official signature and seal of the court this 15th Sept., 1881.

AUSTIN GREEN, *Clerk.*

190 STATE OF LOUISIANA, *Parish of Ouachita:*

Received this notice of interrogatories, with a certified copy of the same & a certified copy of the original interrogatories, in office, on the 15th September, 1881, and on the same day, month, and year I made personal service hereof by handing said certified copies to John H. Dinkgrave, attorney of record for defendants in the city of Monroe, La.

J. E. HANNA,
D'y Sheriff.

Serving notice, &c., 50c.

Petition with Interrogatories to J. W. Green. Filed 15th Sept., 1881.

PARISH OF OUACHITA:

5th District Court.

JAMES HAMILTON *vs.* THE V., S. & P. R. R. Co.

To the hon. the judge of said court:

The defendant in this cause respectfully shows that the testimony of John W. Green, a resident of Augusta, Richmond Co., Georgia, is material & competent and necessary to a proper defence of this cause.

Wherefore defendant prays that a commission issue directed to E. R. Cunningham, a commissioner of the State of Louisiana for the State of Georgia, residing in the city of Augusta, commanding him to take the sworn answers of said J. W. Green to the
191 interrogatories hereafter propounded, said answers to be used as evidence in behalf of defendant upon the trial of this cause.

Pray for proper notice to pl'ff & for general relief, &c.

F. P. STUBBS &
BOATNER & LIDDELL,
Att'ys for Def't.

Interrogatories to John W. Green.

PARISH OF OUACHITA:

5th Dis't Court.

HAMILTON *vs.* V., S. & P. R. R. Co.

1st. Please state your present residence and vocation?

2nd. Were you or not prior to your removal to the State of Georgia the vice-president & gen'l manager of the Vicksburg, Shreveport and Pacific Railroad Co.?

3rd. If so, state when your employment as general manager commenced?

4th. Do you know anything of the construction by defendant of a railroad bridge across the Boeuf river in the autumn or winter of 1880? If so, state whether such construction was necessary or not.

5th. What was the condition of the old bridge across said stream; was it safe and fit for the purposes for which it was constructed?

192 6th. If in answer to the above you state that you know of the construction of the R. R. bridge across said stream, state when the work commenced.

7th. Who directed the building of the draw-bridge; who contracted for its construction; that is, what agent of defendant acted for it in the work?

8th. Were any precautions taken by defendant's agents to have this work speedily finished? If yea, state what those precautions were.

9th. State the season of the year at which the work was commenced?

10th. Was the selection of this period the result of accident or design? If the latter, state the reason why this season was selected.

11th. Do you or not know the seasons of the year or months in which Boeuf river is usually navigable? If yea, state your means of knowledge, & how long you have observed its stages of navigability & the reverse.

12th. Are you acquainted with plaintiff in this suit?

13th. If yea, state whether or not you ever had any conversation or conference with him in regard to the building of a

193 bridge by defendant across Boeuf river?

14th. If yea, state when and where and the substance of said conversation, if *if* you can recollect it?

15th. Was there any delay in putting said bridge in position? If so, state the cause of such delay.

16th. If you state the delay, state whether the cause thereof was anticipated by defendant or its agents, or could have reasonably been anticipated by them.

17th. Do you know the date at which plaintiff first arrived at the bridge with his boat in the month of ——, when the navigation of Boeuf river was obstructed thereby? If [so], state it.

18th. How often in your experience had said Boeuf river been navigable at that season of the year as high as said bridge.

19th. How long have you been connected with and had occasion to observe the stage of water in Boeuf river?

20th. How long have you been connected with the Vicksburg, Shreveport & Pacific; the V., S., P. R. R. & the N. La. & T. R. R. Companies?

194 21st. State whether or not these several corporations have been the owners or operators of the line of railroad running from Delta to Monroe, La.

22nd. State what, if any, means were adopted and used by the defendant or the contractor to expedite the work of construction.

23rd. State the character of the weather during the fall of 1880, and whether any means could have been used successfully to complete the work of that season earlier than it was done.

24th. State to what extent freights, if any, which under ordinary circumstances would have gone by steamer were divirted to and carried over defendant's road.

F. P. STUBBS,
BOATNER & LIDDELL,
Of Counsel.

Before me personally came and appeared Charles J. Boatner, one of the attorneys for defendant in this cause, who swears to the best of his knowledge & belief that the testimony of the witness, John W. Green, is necessary and material to the defendant.

CHAS. J. BOATNER.

Sworn to & subscribed before me this 16th day of September, 1881.

———.

195 Let a commission issue as prayed for herein, returnable on or before the 1st Monday of October, 1881.

Done & signed at chambers, this 16 Sept., 1881.

R. W. RICHARDSON,
Judge 5th District.

Commission to take Testimony of J. W. Green.

The State of Louisiana to E. H. Cunningham, commissioner of the State of La. for the State of Georgia, or to any judge or justice of the peace in the county of Richmond, State of Georgia, Greeting:

Know ye that, reposing special trust in your fidelity and provident circumspection, we do hereby authorize and require of you to cause to come before you John W. Green, and do you him examine on his oath or affirmation touching his knowledge in a certain suit now pending in the 5th district court in and for the parish of Ouachita, State aforesaid, wherein James Hamilton is plaintiff and the Vicksburg, Shreveport & Pacific Railroad Company are defendants; and his answers to the annexed interrogatories so taken do

196 you certify the same and enclose and send them to the clerk of said court at the town of Monroe, in order that the same may be read in evidence on the trial of said cause; also enclose and send this commission on or before the first Monday of October next, 1881, that being the first day of the next term of said court.

Witness the Hon. R. W. Richardson, judge of said court, this 20th day of September, 1881.

AUSTIN GREEN,
Clerk of the 5th Judicial District Court, Parish of Ouachita.

Answers of J. W. Green. Rec'd & Filed April 12th, 1882.

Answers of John W. Green to interrogatories propounded to him in the case of James Hamilton *vs.* The Vicksburg, Shreveport and Pacific Railroad Company.

Answer to interrogatory No. 1: I reside at Augusta, Richmond county, Georgia. I am general manager of the Georgia railroad.

Answer to interrogatory No. 2: Prior to my removal to Georgia I was vice-president & general manager of the Vicksburg,
197 Shreveport and Pacific Railroad Co.

Answer to interrogatory No. 3: I assumed the duties of general manager of the Vicksburg, Shreveport & Pacific Railroad on the 2nd day of December, 1879.

Answer to interrogatory No. 4: I know of the construction of a railroad bridge by the defendant across the Boeuf river in the autumn or winter of 1880. The construction of said bridge was necessary.

Answer to interrogatory No. 5: The condition of the old bridge across said stream was unsatisfactory; it was unsafe and unfit for the purpose for which it was constructed.

Answer to interrogatory No. 6: I believe the work was commenced in June, 1880; I cannot indicate the exact date. The contract made with J. H. Rainbolt, on file in the office of the Vicksburg, Shreveport & Pacific railroad at Monroe, Louisiana, will furnish this information in accurate terms.

198 Answer to interrogatory No. 7: J. H. Reinbolt contracted for the construction of the bridge and immediately directed the execution of the work.

Answer to interrogatory No. 8: All possible precautions were taken by defendant's agents to have the work splendidly finished. The measures adopted were, first, to obtain the necessary material; second, to frame the structure and have it ready for erection when the stage of water in Boeuf river permitted the foundations to be prepared.

Answer to interrogatory No. 9: The work was commenced immediately after the contract was signed. To the best of my knowledge & belief, it was in the month of June, 1880. For exact date see contract on file in V., S. & P. R. R. Co's office.

Answer to interrogatory No. 10: The selection of this period of the year was the result of design. The reason for selecting
199 this period of the year was to procure the material and frame the structure during the summer, so as to have it ready for erection as early as the stage of water would permit the foundations to be prepared.

Answer to interrogatory No. 11: The Boeuf river is usually navi- 1st gable at the railroad crossing from 1st to 15th of January to about of July. I know of what I speak from observation. I have observed the stage of water in Boeuf river for more than fifteen years.

Answer to interrogatory No. 12: Yes; I know the plaintiff in this suit.

Answer to interrogatory No. 13: I had a conference with the plaintiff in regard to the bridge that *that* was being constructed by

the defendant across Boeuf river. The conference was at the office of W. B. Brockett, railroad & steamboat agent in the city of New Orleans. I have no date with me by which to fix the exact date. It was in the month of October, 1880, and I believe early in the month.

200 Answer to interrogatory No. 14: The substance of our conversation was as follows: I stated to the *I stated to the* plaintiff that the unusual rainfall during the summer and early autumn had produced in Boeuf river an exceptional stage of water; that the work of completing the bridge was necessarily retarded, and that the drawbridge could not be utilized for the passage of steamboats until some time during the month of November; the exact date I cannot now recall. I furthermore stated to plaintiff that although the railroad company had the legal right to obstruct the stream to make necessary repairs to the bridge, yet for the sake of harmony & good will the V. S. & P. R. R. Co. would pay him a certain sum per trip, ten days apart, during such time as the bridge obstructed the passage of his boat, provided the plaintiff would stop his boat at Demmings mill about one mile below the bridge. I have no date with me to state in accurate terms the amount I offered, but I believe it was $150.00 for the first trip, and $200 for each succeeding trip.

201 This offer was declined by plaintiff, although he admitted that the first trip of his boat was always attended by loss, even when the stage of water permitted him to reach Lake La Fourche.

Answer to interrogatory No. 15: Yes; there was delay in putting the bridge in position. The cause of the delay was the substructure was incomplete. The high stage of water prevailing during the late summer & early autumn seriously retarded the work of preparing the bridge foundation.

Answer to interrogatory No. 16: The cause of the delay was not anticipated by the defendant or its agents, nor could such cause have been reasonably anticipated by them.

Answer to interrogatory No. 17: I have no data with me to give the exact date when the plaintiff first arrived at the bridge in the month of October, 1880, but believe it was between the 10th & 15th of October.

Answer to interrogatory No. 18: With the exception of the year 1867, I have never known Boeuf river made navigable by

202 rain in the month of October as high up said stream as the railroad crossing. The river was navigable in the autumn of 1875 in consequence of overflow of the Mississippi river.

Answer to interrogatory No. 19: For more than fifteen years.

Answer to interrogatory No. 20: I have been connected with the Vicksburg, Shreveport & Pacific, the V. S. & T. R. R., and the North La. and Texas R. R. Companies for sixteen and a half years.

Answers to interrogatory No 21: The Vicksburg, Shreveport & Pacific, the Vicksburg, Shreveport and Texas, and the North La. & Texas R. R'd Companies have been the owners or operators of the line of railroad running from Delta to Monroe, La.

Answer to interrogatory No. 22: The defendant, through its con-

tractors, urged the work of constructing the bridge with all possible vigor. When it appeared probable that navigation would be
203 restored at such unexpected period the work was prosecuted on Sundays as well as during the week, through days of rain. Even night work was attempted, but was found impracticable.

Answer to interrogatory No. 23: The summer & autumn of 1880 were marked by exceptional rainfall. No means within the reach of the defendant could have been used to complete the work earlier.

Answer to interrogatory No. 24: I have no data with me to show the amount of freight transported by the R. R. that under ordinary circumstances might have been shared by the plaintiff boat. The amount is insignificant.

JOHN W. GREEN.

Sworn to, subscribed before me this 28th day of September, 1881.

JOHN VAUGHAN.

Justice of the Peace in and for the 389 *District, G. M. of the County of Richmond and State of Georgia.*

204 *Letter. Boyd to Hamilton. Filed April 17th, '82.*

GIRARD, LA., *Dec. 6th*, 1880.

Capt. James Hamilton, care Lord and McPeak, New Orleans, La.

DEAR SIR: I think the bridge will be ready for you by the 20th inst., next, but I will telegraph you 4 or 6 days so as to give you time to get here by the time it is ready. I will also let the people in Oak Ridge know when to expect you.

I would have answered your telegraph of the 4th, but I had previously telegraphed you I would let you know when to come.

Your friend, &c.,

G. S. BOYD.

Telegram XX. Boyd to Hamilton. Filed Apl. 17, '82.

Dated Girard, La. Rec'd 11 a. m. Dec. 1st.

To James Hamilton, care Lord and McPeak:

So much rain bridge won't be ready by fifteenth. Will telegraph you five or six days before you can pass.

G. S. BOYD.

20 paid. 139.

204½ State of Georgia, by his Excellency Alfred H. Colquitt, Governor and commander-in-chief of the army and navy of this State, and of the militia thereof—all to whom these presents shall come, Greeting:

Know ye that John Vaughn, whose official signature appears to the instrument of writing hereto annexed, was, at the time of affixing the same thereto, a justice of the peace in and for 398th district, G. M., Richmond county, in this state, as appears from the records of this department, and that his attestation is in due form. Therefore all due faith, credit, and authority is and ought to be had and given to his attestation as such.

Given under my hand and the great seal of the State, at the capitol in Atlanta, this the fifth day of April, in the year of our Lord one thousand and eighty-two, and of the Independence of the United States of America the one hundred and sixth.

[SEAL.] ALFRED H. COLQUITT,
Governor.

Received $2.00.
For entering, received 50 cents.
By the Governor:

N. C. BARNETT,
Secretary of State.

204¾ Executive department, Atlanta, Ga., April 5th, 1882.
J. W. WARREN,
Secretary Executive Department.

A true copy of original certificate.

ROB. J. WILLSON,
Clerk Supreme Court of La.

205 *Telegram X. Boyd to Hamilton. Filed Ap'l* 17, '82.

GIRARD, LA., 27.

Received at 12, Nov. 27.

James Hamilton, care Lord & McPeak:

If rain don't prevent you can pass bridge by tenth or fifteenth.

G. S. BOYD.

12 p'd. 332.

Pl'ff's Bill of Exceptions. Filed April 12, '82.

STATE OF LOUISIANA, *Parish of Ouachita*:

5th District Court.

JAMES HAMILTON *vs.* V. & PACIFIC R. R. CO.

Be it remembered that on this day, the 12th day of April, being the day fixed for the trial of said case, when the case was called for trial defendant asked for a postponement of the case, on the ground that the testimony of J. W. Green had not been returned & that they had a telegram from said Green saying that said evidence had been forwarded. Which was objected to on the ground that the case had already been postponed once under the following circumstances, to wit: When the case was reached regularly on the
206 docket and called for trial an affidavit for a continuance was made by the defendant on the grounds stated in their affidavit in regard to the testimony of said Green, which had been taken in Georgia by a justice of the peace, whose signature was not authenticated, & a rule to show cause having been taken was answered and the objections to the evidence was sustained.

That on agreement of the application for a continuance it was

distinctly intimated that if a continuance were granted that plaintiff would admit the evidence rather than have the case continued, but that defendant was guilty of laches in not having had the testimony of Green taken over, as several terms of the court had intervened since the return of said testimony. And notwithstanding what had been said on agreement, and the distinct declaration of plaintiff's counsel that he would insist upon all his legal rights, defendant sent the testimony of Green with the commission & *procés-verbal* to Georgia to have the signature properly authenticated,
& thus deprived plaintiff of the right to admit the testimony
207 rather than continue or postpone the trial, and without
giving the plaintiff an opportunity to cross-question the witness; & that the defendant was guilty of laches. Which objection was overruled & the case was postponed till the meeting of court this afternoon, to which ruling plaintiff excepted & tenders this bill of exceptions for signature.

Done & signed this 12th of April, 1882.

By the COURT: The defendant's counsel read telegram stating that the testimony had been mailed, & the court only postponed taking up the case until the meeting of court, after dinner, about which time the mail arrives.

R. W. RICHARDSON,
Judge 5th Dist.

Pl'ff's Bill of Exceptions. Filed 14th Ap'l, '82.

STATE OF LOUISIANA, *Parish of Ouachita:*

5th District Court.

JAMES HAMILTON *vs.* V., S. & P. R. R. Co.

Be it remembered that on the trial of this case F. G. Hudson, a witness & district attorney, was asked to state his reason for investigating the matter of the obstruction of Boeuf river by defendant, &
his conclusions, which were objected to by the plaintiff on the
208 grounds that the reasons or conclusions of the witness was
not evidence, & that it was irrelevant and inadmissible under the pleadings; which objections were overruled, and plaintiff excepted.

2nd. And the same witness was asked if Rainbolt, the bridge builder or contractor, had pointed out the difficulties he had to encounter; which was objected to on the ground that it was heresay & irrelevant; which objections were overruled, and plaintiff excepted.

3. Be it further remembered that plaintiff offered certain telegrams, numbered 1, 2, 3, & hereto attached & made a part hereof, addressed to the plaintiff, & which the plaintiff had testified he had received; which was objected to on the ground that there was no proof of the signatures thereto; which objection was sustained, & plaintiff excepted.

And on the trial plaintiff offered the testimony taken by commission of witnesses in Morehouse parish, named in commission & interrogatories filed 10th of May, 1881, to wit:

209 Which was objected to on the ground that the same had not been returned before the expiration of the return day, which objection was sustained, & plaintiff excepted & attaches the evidence to this bill as a part thereof (page 226.) And the plaintiff offered the testimony of witnesses named in the petition for a commission, and in the caption to the interrogatories propounded and attached to a commission addressed any judge or justice of the peace or magistrate of Morehouse parish; which was objected to on the ground that the witnesses named were not mentioned in the commission, & the objection was sustained, and plaintiff excepted. And he prays to have these, his bills of exceptions, signed.

Read and signed in open court 15th April, 1882.

R. W. RICHARDSON,
Judge of 5th Dist.

Pl'ff's Bill of Exception. Filed Ap'l 18, '82.

STATE OF LOUISIANA, *Parish of Ouachita:*

5 Dist. Court.

JAMES HAMILTON. *vs.* V., S. & P. R. R. Co.

Plaintiff objects to the testimony of J. W. Green on the fol-
210 lowing grounds, to wit:

1. That said testimony was taken by commission on the 28th of Sept., 1881, in the State of Georgia. Rule was taken to show cause why said testimony should not be used, & was answered, & the objection to the reading thereof as evidence was maintained. That on the argument of the rule and answer it was stated by plaintiff's attorney, J. T. Ludeling, that the interrogatories had been served during his absence from the State, and that they had not been crossed, & he urged that as a reason why he believed his recollection that he had made no agreement about said testimony was correct, & he stated he would insist upon all his legal rights. That notwitstanding said declarations in open court, and in the hearing of the presiding judge, and attorneys for defendants, they sent the testimony to Georgia to have a certificate of the Governor attached thereto. He objects that he is denied thereby the right to cross-examine said witness, which he had to do, after the ruling of the court on the rule to show cause if the defendant desired to
211 take the testimony over or to cure defects in the execution of the commission.

2. If the foregoing be overruled, plaintiff objects that the alleged certificate of the Governor of Georgia, dated long after the execution of the commission, is not written on the same paper as the deposition, and there is no evidence that the Governor ever saw the justice's certificate if he, the Governor, signed it.

3. It is objected that the Governor of Georgia did not sign said certificate, it being manifest that the signature is made by the secretary of the executive department.

4. He further objects to the first sentence in answer to the 8th

interrogatory on the ground that he therein gives his opinion, which is not evidence. He objects to the 14th answer, commencing at the words "I stated to the plaintiff, &c.," to the words "Yet for the sake, &c.," on the grounds that the witness, the agent of the defendant, [is] detailing his opinions expressed to the plaintiff, which is not evidence. He objects to that part of the answer which commences at the words "Although he admitted, &c.," to the close of the answer, on the grounds that it is only a part of an admission without stating the whole conversation or statement in connection with said ad-
212 mission. He objects to the 16th answer on the grounds it is only the opinion of the witness, which is not evidence.

Plaintiff objects to the first sentence in the 22nd answer on the grounds that it only expresses the opinion of the witness, which is not evidence. He objects to the last sentence of the 23rd answer, because it expresses only the opinion of the witness. He objects to the last sentence in answer 24, for the same reason.

LUDLING, *Att'y.*

STATE OF LOUISIANA, *5th Dist. Court:*

Be it remembered that on the trial of the above-entitled cause the above objections were made to the reception of the testimony of J. W. Greene, taken by commission and offered in evidence, & the district judge decided that the certificate was not signed by the Governor & was not a proper certificate, but that to prevent the possibility of having the case remanded should the supreme —— not agree with him he would admit & the evidence was admitted & he over-
213 ruled the other objections, to which rulings the *the* plaintiff excepted & tenders this his bill of exceptions, which he prays may be signed this 18th day of April, 1882, & it was agreed that the original certificate should be annexed to the transcript. (Annexed between this page & last.)

R. W. RICHARDSON, *Judge.*

Pl'ff's Bill of Exceptions. Filed Ap'l 8th, '82.

STATE OF LOUISIANA, *Parish of Ouachita:*

5th District Court.

JAMES HAMILTON *vs.* V., S. & P. R. R. Co.

Be it remembered that the trial of this cause, when plaintiff's counsel was about to commence the argument, the judge *a quo* announced that the argument in the case would be limited to one & a half hour on each side, which was objected to by plaintiff's counsel because the time was insufficient for them to fully present their case to the jury, and that under the Constitution they had a right to be heard; which objection was overruled & and a bill of exceptions was taken, and pl'tiff presents this bill of exceptions to be signed.

Done & signed this 18th of April, 1882.

214 By the COURT. Argument was limited in this case because much time had unnecessarily been occupied in its trial. The

docket is very heavy and a proper regard for the rights of other litigants, in the opinion of the court, authorized the order.

R. W. RICHARDSON,
Judge 5th District.

Pl'ff's Bill of Exceptions. Filed Ap'l 18, '82.

STATE OF LOUISIANA, *Parish of Ouachita:*

5th District Court.

JAMES HAMILTON *vs.* V., S. & P. R. R. Co.

Be it remembered that on the trial of this case the witness, Preston, was asked his opinion as to whether there were enough men at work on the bridge, to which plaintiff objected on the ground that the opinion of the witness on that subject was not evidence, which was overruled & a bill of exceptions was taken to the ruling. And the same witness was asked if the work was commenced as early as possible after the water had declined, which was objected to on the ground that the opinion of the witness on that question was not evidence. The objection was overruled & a bill of exceptions
215 was taken to the ruling of the court. And the same witness was asked the question whither there were as many men at work as could be worked to advantage, which was objected to on the ground that the opinion of the witness on that point was not evidence; which was overruled & a bill of exceptions was taken.

Plaintiff presents these bills of exceptions & prays that they may be signed.

Done & signed this 18th April, 1882.

R. W. RICHARDSON,
Judge 5th Dist.

Def'd't's Bill of Exceptions. Filed Ap'l 17, '82.

5th Dist. Court, Parish of Ouachita.

JAMES HAMILTON *vs.* THE V., S. & P. R. R. Co.

Be it remembered that on the trial of this cause the defendant objected to any evidence being offered by plaintiff in support of his allegations of loss resulting from competition of another boat entering the Boeuf river trade, on the ground that such damage, if it existed, was not the direct consequence of any act of this defendant or the result of any act of defendant; which objection was
216 overruled, and defendant excepts, this bill, by agreement, to cover all evidence on this subject. And defendant further objected to the introduction of any evidence in support of the demand for attorney's fees, on the ground that there is no allegation in plaintiff's petition charging malice in defendant in the acts complained of, and that in an ordinary action for debt or damages attorney's fees are not answerable; which objection was overruled by the court and the evidence admitted; to which defendant excepts and reserves this bill of exceptions.

Defendant also objects to the introduction of a postal card purporting to have been written by W. T. Jordan to plaintiff, a letter purporting to have been written by H. F. Vickers to plaintiff, one by W. H. Duff, one by J. Wm. Davis, Meyer & Baer, John Jones, & others, and from C. W. Eason, on the ground that said letters were the unsworn statements of third parties *ex parte*, and are *res inter alias acta;* which objections were overruled and said letters admitted to prove *rem ipsam;* to which ruling defendant excepted, and
217 reserves this bill of exceptions.

Defendant also objected to the introduction of the testimony of C. W. Eason, taken under commission, on the ground that the commissioner under which the same was taken contained the name of "C. E. Eason," and there is nothing to show that C. W. Eason is the party referred to in said commission, which objection was overruled and the testimony received, to which defendant excepted, & reserves this bill; and defendant further objected to the answers of James Hamilton to the third & fourth cross-interrogatories propounded, on the grounds that said answers are not responsive to the questions, which objections were overruled and the answers rec'd; to which ruling defendant excepted, and reserves this bill, which is signed in open court this 15th April, 1882.

R. W. RICHARDSON,
Judge 5th Dist.

Def't's Bill of Exceptions. Filed Ap'l 18th, '82.

State of Louisiana, 5th District Court, Ouachita.

JAMES HAMILTON *vs.* V., S. & P. R. R. Co.

Be it remembered that on the trial of this cause defendant
218 having offered the testimony of J. W. Green, taken under commission, whereupon plaintiff objected, stating his objections in writing, which are referred to.

The court from inspection oi the document expressed doubt as to the genuineness of the signature of Gov. Colquitt to the certificate of genuineness & capacity of the J. P., who executed the commission, but under the circumstances he would admit the testimony. Defendant excepted to the expression of opinion by the court as to the genuineness of the signature of the Governor, and asks that the original may go up with the transcript for the inspection of the appellate court, which is accordingly ordered.

Be it further remembered that defendant having offered in evidence the documents proven by W. R. Wadsworth, and marked "a a," "b b," & "c c," whereupon plaintiff objected that the testimony was irrelevant. Which objection being sustained, counsel for defendant excepted, and annexing said documents hereto asks that this bill be signed, which is accordingly done.

R. W. RICHARDSON, *Judge.*

219 *Document "A A," Annexed to Def't's Bill of Exceptions.*

"A A."

Gross earnings of the V., S. and P. R. R. for the months of Sept., Oct., and Nov., and Dec., 1879:

Date.		Earnings.	Total.
1879.			
Sept.	Freight	10,525 85	
	Passenger	2,105 50	
	Mail	295 25	
	Express	168 50	
	News	15 00	
			$13,110 10
Oct.	Freight	26,393 89	
	Passenger	3,470 85	
	Mail	295 24	
	Express	175 85	
	News	30 00	
			$30,365 83
Nov.	Freight	29,803 ~~90~~	
	Passenger	4,741 86	
	Mail	295 24	
	Express	215 09	
	News	30 00	
			35,086 18
Dec.	Freight	25,430 34	
	Passenger	7,867 05	
	Mail	295 25	
	Express	277 91	
	News	30 00	
			$33,900 55

220 *Document "B B," Annexed to Def't's Bill of Exceptions.*

"B B."

Total number B. C. shipped over the V., S. & P. R. R. in Sept., Oct., Nov., & Dec., 1879:

	September.	October.	November.	December.
1879	4,626	12,625	14,792	10,753
1880	854	5,446	3,387	2,586

Document "C C," Annexed to D'f't's Bill of Exceptions.

"C C."

Date.		Earnings.	Total.
1880.			
Sept.	Freight	12,238 51	
	Passenger	3,605 67	
	Mail	295 24	
	Express	146 86	
	News	30 00	
			$16,316 28

Oct.	Freight	14,937	46	
	Passenger	3,932	33	
	Mail	295	24	
	Express	134	98	
	News	30	00	
				$19,330 01
Nov.	Freight	12,491	59	
	Passenger	3,262	89	
	Mail	295	24	
	Express	126	45	
	News	30	00	
				$17,206 17
Dec.	Freight	9,223	83	
	Passenger	5,244	39	
	Mail	295	25	
	Express	180	53	
	News	30	00	
				$14,974 00

221 *D'f'ts Bill of Exceptions to Charge. Filed Ap'l* 20, '82.

The State of Louisiana, 5th Dist. Court, Ouachita.

JAMES HAMILTON *vs.* V., S. & P. R. R. Co.

Be it remembered, that upon the trial of this cause the counsel for defendant observed his honor the judge writing what he assumed was his charge, did not formally request the court to deliver his charge in writing; counsel expressed desire of excepting thereto, inquired of the judge if it was not in writing; whereupon he stated it was not, but he would reduce it to writing if desired. It was suggested that it would detain the jury; whereupon the exception to the charge of the judge was announced, and the judge declaring he would reduce it to writing, the jury retired, and the court reduced its charge to writing, which is hereto annexed & made a part hereof, and this bill of exceptions retained thereto, which defendant prays may be signed, which is accordingly done this 20th April, 1882. By the court inquiry was made of counsel as to what part of the charge was objectionable; counsel replied that he excepted to
222 the whole charge. No special charge was requested by counsel for pl'ff or def't.

R. W. RICHARDSON,
Judge 5th Dist.

Continuation of Last Bill of Exceptions. (*By the Court.*)

Dist. Court, Ouachita.

HAMILTON *vs* V., S. & P. RAILROAD.

The court was not requested to give a written charge to the jury by either party. After the charge was given, and before the jury retired, counsel asked if the charge was written, stating that he was of impression that the court had prepared a written charge and had

read it to the jury, and stated he desired to except to the charge. The court stated that no written charge had been prepared or read; that he had made in a memorandum book some general notes with reference to authorities upon the subject of action for damages, but that he would, if desired, state in writing the points of the charge given. The court charged that all the navigable streams within this State are public, and every one has the right to use them for
that purpose without hindrance, with due regard to the rights
223 of others, and no one has a right to obstruct such free use, & those who obstruct the navigation of a stream, besides being amenable to the penal laws of this State, are responsible in damages to any one who is injured by such obstruction. The court stated the principle of law as contained in article 2315, & the latter clause of section 3 of art. 1934 of the Civil Code.

The court stated that the general rule of law was that the plaintiff was entitled to recover such damage as was the natural & direct result of the act complained [of], and not the remote consequence; but when the act complained of and established by jury was an offence or quasi-offence denounced by the law some discretion was given by the jury in the assessment of the amount of the damages to which the pl'ff was entitled.

The court charge the jury that as to actions for damages there was a principle of law known as *damnum absque injuria*, which meant that where a wrong was done or committed, but no injury or damage resulted therefrom to the party complaining, no damages could be allowed.

224 The court charged the jury that actions sounding in damages were particularly within the province of juries; that it was incumbent upon the plaintiff to establish clearly the amount of damage sustained by the act complained of; except if they found that such act was an offence or quasi-offence, they were vested with some discretion in the assessment of damages.

That the jury were the judges of the credit and weight to be given to the testimony; they were not bound to believe or take as true the testimony of any of the witnesses, but should weigh and consider it and give it such weight as in their judgment it was entitled to under all the facts & circumstances shown by the testimony in the case.

In some parliamentary remarks, which I presume are not desired, the court called the attention of the jury to the character of the action, and warned them against permitting their judgment to be swayed or influenced by the character of the parties; that a railroad stood before the courts with all the rights, and was enti-
225 tled to a fair and impartial trial and verdict as any private individual, &c.

Commission to take Testimony of Witnesses in Morehouse. Annexed to Pl'f's Bill of Exceptions. Filed (see page —.)

The State of Louisiana to any judge or justice of the peace or qualified officer in the parish of Morehouse, Greeting:

Know ye that reposing special trust in your fidelity & provident

circumspection we do hereby authorize and require of you to cause to come before you C. W. Eason, Leroy Lee, J. W. Davis, John Jones, Jr., J. M. Sharp, T. W. Baird, & Milton Larkin, of Morehouse parish, and do you them examine on their oaths or affirmation touching their knowledge in a certain suit now pending in the fifth district court, in and for the parish of Ouachita, State aforesaid, wherein James Hamilton is plaintiff and The Vicksburg, Shreveport & Pacific Railroad is defendant, and their answer to the annexed interrogatories, so taken do certify the same and inclose and send them to the clerk of the said court at the town of Monroe, in order
226 that the same may be read in evidence on the trial of said cause. Also enclose and send this commission on or before the first Monday of April next, 1881, that being the first day of the next term of said court.

Witness the Hon. R. W. Richardson, judge of the said court, this 23rd day of March, 1881.

AUSTIN GREEN,
Clerk of the 5th Judicial District Court, Parish of Ouachita.

(For interrogatories propounded to these witnesses see page 175.)

Answers of M. Larkin. Attached to Pl'f's Bill of Exceptions. Filed May 10th, 1882.

Fifth Judicial District Court, Parish of Ouachita.

JAMES HAMILTON
vs.
THE VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 1655.

Answers to direct & cross-interrogatories made before Aug. Simon, J. P. 4th ward, Pr. Morehouse, La.

Depositions of Milton Larkin & Dr. J. W. Baird, taken at Bastrop, La.

Mr. MILTON LARKIN, being duly sworn, says:

To int. 1st. I am; I have known him two or three years. Hamilton is captain of St. Era No. 10, running from New Orleans to Eason's Ferry, Lake Lafourche. He was running the "Era
227 No. 10" between Eason's Ferry and New Orleans in 1879 & 1880.

To int. 2nd. I do not know; I cannot answer this interrogatory.

To int. 3rd. There was plenty water.

To int. 4th. I do not know; I heard only that they were repairing R. R. bridge. I do not know who placed this obstruction in the river, or caused it to be placed there.

To int. 5th There was cotton ready for the Era No. 10 when she was prevented from going to Eason's Ferry in the fall or winter of 1880. There was, and I shipped it myself on the railroad. The price of shipping by rail was two dollars and fifty cents; per boat the charge was about one dollar and fifty cents.

To int. 6th. They were.

To int. 7th. I cannot answer this interrogatory. I know
228 another boat was brought in the trade, but cannot say why the people patronized her.

To int. 8th. The plaintiff was damaged but I am unable to state the extent of the damage.

To int. 9th. I do not know.

To int. 10th. Boeuf river is a navigable stream; the boats run as high up as Eason's Ferry, Lake Lafourche.

To int. 11th. I know nothing else.

To int. 12th. It is occasionally; not frequently.

Cross-interrogatories:

To cross-int. 1st. I do not know.

To cross-int. 2nd. It was.

To cross-int. 3rd. I cannot say.

229 To cross-int. 4th. I do not know.

To cross-int. 5th. I cannot remember the number of bales of cotton I shipped by the railroad from November 10th to Dec. 20th, 1880. I know Mr. Heffner, J. W. Davis, Robert Whitstone, Leroy Lee, Meyer & Baer shipped cotton by rail during said time, but I do not know the number of bales.

To cross-int. 6th. They hauled it to Girard.

To cross-int. 7th. Navigation in Boeuf river generally opens late in the fall, but opened unusually early in the fall of 1880.

Cross-int. 8th. There was a good deal.

To cross-int. 9th. It was.

To cross-int. 10th. It was.

230 M. K. LARKIN.

Sworn to and subscribed before me, this 21st day of April, A. D. 1881.

AUG. SIMON, *J. P.*

Answers of T. W. Baird Annexed to Pl'ff's Bill of Exception.

T. W. BAIRD, making affirmation, deposes and says:

To int. 1st. I know the plaintiff; have known him for several years. His business is steamboating; he was running the Era No. 10.

To int. 2nd. I know nothing about it, except from hearsay.

To int. 3rd. If he brought her to the R. R. bridge he could have brought [her] to the ferry.

To int. 4th. I cannot answer this interrogatory, having no knowledge about it.

To int. 5th. From hearsay, there was a great deal of cotton ready for shipment by boat from Eason's Ferry, and was told by
231 shippers that they shipped from Girard by rail because of the boat not comming to Eason's Ferry. I do not remember the price per bale for shipping by rail. I do not remember the price by boat.

To int. 6th. Some were. I heard parties accuse Capt. Hamilton

of having sold out to *to* the railroad. Do not remember the parties, though.

To int. 7th. I know nothing of that.

To int. 8th. I think he was damaged very much, but cannot estimate the extent of the damage.

To int. 9th. I do not know.

To int. 10th. It is just above Point Jefferson landing.

To int. 11th. At P't Jefferson Bayou Lafourche leaves Boeuf river, and about 9 or 10 miles below (by water) is Eason's ferry, on
232 Lake Lafourche, and from Point Jefferson to Eason's ferry there is at all seasons of the year a sufficiency of water to float the Era No. 10, well loaded, excepting about one-third of a mile before emptying into the lake, and at the time in question the Era No. 10 could have passed that one-third mile.

To int. 12th. It is.

Cross-interrogatories:

To cross-int. 1st. I do not know. See answer to direct int. 4th.

To cross-int. 2nd. It was.

To cross-int. 3rd. I do not know.

To cross-int. 4th. I think not.

To cross-int. 5th. I have shippsd some, but do not remember. There were cottons shipped via Girard by the merchants at
233 Oak Ridge, but I do not know the number of bales.

To cross-int. 6th. To Girard.

To cross-int. 7th. Late in the fall it did not.

To cross-int. 8th. Not as much as usual.

To cross-int. 9th. It was.

To cross-int. 10th. I think so.

F. W. BAIRD.

Affirmed to and subscribed before me, this 21st day of April, 1881.

AUG. SIMON, *J. P.*

Answers of J. M. Sharp. Annexed to Pl'ff's Bill of Exception.

Testimony taken at the residence of J. M. Sharp.

J. M. SHARP, being duly sworn, makes answer as follows:

To int. 1st. I am acquainted with the plaintiff; know him
234 about three years; he is captain of the Era No. 10; he was running the Era No. 10 in 1879 & 1880.

To int. 2nd. I do know; but if he was trying to take any boat to Eason's Ferry it must have been the Era No. 10. I do not know when and how often.

To int. 3rd. I do not know.

To int. 4th. I do not know. I saw the R. R. bridge in the fall of 1880, and then navigation was obstructed in Boeuf river by piling driven in the river; I do not know who placed said obstructions there.

To int 5th. I do not know; the price for shipping cotton by rail was two dollars & 50 cents, and one dollar & 75 cents by boat.

To int. 6th. They were; I heard many complaints.

235 To int. 7th. I learned that another boat came in the trade, but I do not know what for.

To int. 8th. I do not know; but if there was any obstructions in the river he must have been damaged. I do not know the the extent of the damage and loss.

To int. 9th. I do not know; I do not know.

To int. 10th. It is. They run as far as Point Jefferson on the river, and from there up Lake Lafourche to Eason's Ferry.

To int. 11th. I don't know anything that would benefit the plaintiff.

To int. 12th. It is; frequently.

Cross-interrogatories:

To cross-int. 1st. I don't know.

To cross-int. 2nd. I don't know.

To cross-int. 3rd. I don't know anything about it.

To cross-int. 4th. I don't know.

236 To cross-int. 5th. I shipped but five bales; do not know how much other parties shipped; I do not know the parties.

To cross-int. 6th. To Girard.

To cross-int. 7th. It is uncertain; it did open unusually early.

To cross-int. 8th. I do not know.

To cross-int. 9th. Yes; it was.

To cross-int. 10th. Mine was, but I cannot state for others.

J. M. SHARP.

Sworn to & subscribed before me, this 6th day of May, A. D. 1881.

AUG. SIMON, *J. P.*

Answers of Leroy Lee. Annexed to Pl'ff's Bill of Exceptions.

Depositions of Leroy Lee & J. Wm. Davis, taken at Oak Ridge, La.

LEROY LEE, being duly sworn according to law, deposes as follows:

237 To int. 1st. I am; have known him for seven or eight years. He is captain of the steamer Era No. 10, running in Boeuf river. He has been running the Era No. 10 in the years 1879 & 1880.

To int. 2nd. I do know. He tried to take the Era No. 10 to Eason's Ferry about every 10 or 14 days.

To int. 3rd. There was.

To int. 4th. I do not know; but I heard from G. S. Boyd, agent, and others that the boat could not come through on account of the R. R. bridge not being finished. I suppose that the R. R. company put the obstructions in the river, but do not know it.

To int. 5th. There was. Some of the cotton was moved away from Eason's Ferry and carried to Girard, and shipped from there by rail.

Some cotton had to remain there until the boat could get
238 through the bridge. The price for shipping by rail was two dollars & fifty; hauling from the lake to Girard was 50 cents per bale. The price for shipping by boat was one dollar & seventy-five cents, & storage 25 cents.

To int. 6th. They were, very much.

To int. 7th. I do not know.

To int. 8th. He has been damaged and suffered loss. I cannot state the amount, but it has been considerable.

To int. 9th. I don't know; navigation was obstructed in Boeuf river about 4 trips of the Era No. 10.

To int. 10th. It is. The boats run up to Point Jefferson, and from there up Lake Lafourche to Eason's Ferrry.

239 To int. 11th. The merchants & planters threatened to get a boat of their own in the place of the Era No. 10, as it was generally reported that Captain James Hamilton was bought out by Major Green, superintendent of the R. R.

To int. 12th. It is.

Cross-interrogatories:

To cross-int. 1st. As well as I recollect it was in October, 1880.

To cross-int. 2nd. I think so.

To cross-int. 3rd. The river was navigable in October and remained so the whole winter, but the Era No. 10 was prevented from coming to Easton's Ferry on account of the obstruction placed there at the R. R. bridge.

To cross-int. 4th. I do not know, because I don't know when or at what time they commenced repairing the bridge, but it was navigable up to the first attempt the Era No. 10 made to come to Eason's Ferry, but was turned back by the bridge.

To cross-int. 5th. Thirty-five bales cotton. There was a
240 good deal shipped by other parties, but I do not know the number of bales. The other parties were Meyer & Baer, A. Hefner, J. Wm. Davis, R. Whetstone.

To cross-int. 6th. To Girard station.

To cross-int. 7th. Navigation in Boeuf river usually opens in November, but in 1880 it opened unusually early.

To cross-int. 8th. It was, and it was the best grade of cotton.

To cross-int. 9th. It was.

To cross-int. 10th. The bulk of the cotton was, but it was of a very inferior quality.

LEROY E. LEE.

Sworn to & subscribed before me this 6th day of May, 1881.

AUG. SIMON, *J. P.*

241 *Answers of J. W. Davis Annexed to Pl'ffs' Bill of Exceptions.*

Mr. J. Wm. Davis, being duly sworn according to law, deposes and says as follows:

To int. 1st. I am. I have known the plaintiff for about ten

years. He is captain of the Era No. 10. He was running the Era No. 10 in 1879 & 1880 between Eason's Ferry and New Orleans.

To int. 2nd. I don't know. I cannot answer, but I have 2 letters from the plaintiff that he tried to come to Eason's Ferry twice; showing from these letters that he made two efforts. He tried to come every 10 or 14 days during the time they said that they were working on the bridge, but do not know the date.

To int. 3rd. There was.

To int. 4th. It was said to be the R. R. bridge.

To int. 5th. There was. There was some cotton shipped on the R. R. which the Era No. 10 would have carried. The R. R. charged two dollars and a half, and hauling from here to Girard cost
242 one dollar. The boat charged one dollar and six bits freight, and it costs 40 cents to haul it from Oak Ridge to Eason's Ferry.

To int. 6th. Yes, they were.

To int. 7th. I do not know.

To int. 8th. I do not know. I cannot answer.

To int. 9th. I do not know exactly, but I think about four or five trips.

To int. 10th. It is at Berkley's Mill, and down to Lake Lafourche to Eason's Ferry.

To int. 11th. It was generally reported and believed that the plaintiff had sold out to the railroad during those trips.

To int. 12th. Yes, it is.

243 Cross-interrogatories to cross-int. 1st. I don't know but it was said when they were working on the bridge, but I do not remember the date.

To cross-int. 2nd. It was navigable to Point Jefferson.

To cross-int. 3rd. It was navigable every time the boat was said to have made an effort to pass the obstructions at the bridge.

To cross-int. 4th. I think so.

To cross-int. 5th. Fourteen bales, but there were between 60 & 70 bales of cotton belonging to me stored at Eason's for several weeks, thinking that Era No. 10 would come through, causing me a heavy loss by sales on account of the delay. I do not know the amount of cotton others shipped; the other shippers were L. E. Lee, A. Hefner, R. Whetstone, Meyer & Baer, Dr. T. W. Baird, Hampton, T. W. Williams, Geo. Higginbotham, R. E. Phillips, J. N. Sharp, C. W.
244 Eason, A. S. Pipes, and others.

To cross-int. 6th. To Girard station and Point Pleasant, on Bayou Bartholomew, so said.

To cross-int. 7th. I think navigation in Bœuf river usually opens in November or December. I think so.

To cross-int. 8th. There was not much.

To cross-int. 9th. It was.

To cross-int. 10th. Yes, it was.

J. WM. DAVIS.

Sworn to & subscribed before me this 1st day of May, 1881.

AUG. SIMON, *J. P.*

STATE OF LOUISIANA, *Parish of Morehouse:*

I, August Simon, the aforesaid and undersigned justice of the peace in and for the fourth ward of the parish & State aforesaid, duly commissioned and qualified, do certify that I caused
245 Milton Larkin, T. W. Baird, J. M. Sharp, Leroy Lee, and J. Wm. Davis, witnesses hereinbefore named and examined, to appear before me, at the time and places before named, and, after publicly & solemnly swearing them, with the exception of T. W. Baird, who made affirmation, to tell the truth, the whole truth, and nothing but the truth, in answer to the annexed and foregoing direct & cross-interrogatories, I then and there proceeded to examine them by propounding to them the said direct and cross-interrogatories, and reducing, in my presence and that of the witnesses, their answers thereto, with my own hand, and I then caused the said witnesses to sign their names to their depositions in my presence, as already stated.

In witness whereof I have hereunto set my hand and official signature this 9th day of May, A. D. 1881.

AUGUST SIMON,
Justice of the Peace, 4th Ward, Parish of Morehouse, La.

Magistrate's charges:

246	Issuing subpœnas, traveling, & taking testimony	23 50
	Constable's fees to be furnished, mileage, & per diem of	
	T. W. Baird	2 80
	Mileage & per diem of Milton Larkin	2 80
		$29 10

Verdict. Filed Ap'l 17th, 1882.

We, the jury, give the plaintiff Hamilton a verdict of one thousand dollars damages.

Monroe, La., April 17th, 1882.

J. H. McCORMICK, *Foreman.*

Judgment.

JAMES HAMILTON
vs.
THE VICKSBURG, S., & P. R. R. Co. } 1655.

By reason of the law and the evidence, & the verdict of the jury being in favor of the plaintiff, it is ordered, adjudged, & decreed that there be judgment in favor of the plaintiff, James Hamilton, against the Vicksburg, Shreveport & Pacific R. Road Company, the defendant, for the sum of one thousand dollars & costs of suit.

Read and signed in open court this 2nd day of May, 1882.

R. W. RICHARDSON,
Judge, 5th Dist.

247 *Mo. for New Trial Filed.*

Minutes Ap'l 19, '82.

WEDNESDAY, *April 19th*, 1882.

Court opened pursuant to adjournment.

Present: Hon. R. W. Richardson, judge; Austin Green, clerk; J. E. McGuire, sheriff.

JAMES HAMILTON *vs.* V., S. & P. R. R. Co. } 1655.

Motion for new trial filed by plaintiff.

JAMES HAMILTON *vs.* V., S. & P. R. R. Co.

The plaintiff respectfully moves the hon'l court for a new trial for the reason that the verdict rendered therein is contrary to law & evidence.

Respectfully,

JNO. T. LUDELING, *Att'y.*
JNO. H. DINKGRAVE.

New Trial Refused. Orders of Appeal.

Minutes May 2, '82.

TUESDAY, *May 2nd*, 1882.

Court opened pursuant to adjournment.

Present: Hon'l. R. W. Richardson, judge; Austin Green, clerk; J. E. Hanna, d'y sh'ff.

248 JAMES HAMILTON *vs.* V., S. & P. R. R. } 1565.

Motion for new trial submitted and overruled.

On motion of plaintiff's counsel, made in open court, counsel for def't being present, for appeal from the judgment rendered in this case, it is ordered that an appeal, devolutive and suspensive, be granted, returnable to the hon. supreme court at its next session at the city of Monroe on the second Monday of June next on pl'ff giving bond in the sum of one hundred dollars ($100.00) for a devolutive appeal and in the amount required by law for a suspensive appeal.

On motion of defendant's counsel, made in open court, counsel for pl'ff being present, for an appeal from the judgment rendered in this case, it is ordered that an appeal, devolutive and suspensive, be granted, returnable to the hon. supreme court at its next session at the city of Monroe on the second Monday of June next on defendant giving bond in the sum of one hundred dollars for a devolutive appeal, and in the amount required by law f- a suspensive appeal.

249 *Pl'ff's Appeal Bond. Filed May 5th*, 1882.

THE STATE OF LOUISIANA, *Parish of Ouachita:*

Fifth District Court.

JAMES HAMILTON
vs.
THE VICKSBURG, SHREVEPORT & P. R. R. COMPANY. } No. 1655.

Know all men by these presents that we, James Hamilton, of the parish of Orleans, La., as principal, & John T. Ludeling & R. M. Faust, of Ouachita, as security, are held and firmly bound unto Austin Green, clerk of the fifth district court in and for said parish and State, and his successors in office, in the sum of one hundred & fifty dollars, lawful money of the United States of America, for the payment whereof well and truly to be made, we bind ourselves, our heirs, administrators, and assigns, and each of us *in solido*, firmly, by these presents. Dated and signed this 3rd day of May, A. D. 1882.

The condition of the above obligation is such that, whereas the above-bounded James Hamilton & John T. Ludeling have applied for and obtained an order for a devolutive appeal from a certain final judgment signed against defendant in our said court on the 2nd day of May, A. D. 1882, in the above entitled and numbered suit:

Now, therefore, if the said James Hamilton & John T. Ludeling shall well and truly prosecute *his* said appeal with effect, and
250 shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied out of the proceeds of the sale of his estate, real & personal; if he be cast in his said appeal, then this obligation to be null & void; otherwise to be and remain in full force and effect against principal and security.

JAMES HAMILTON,
Per his Att'y, J. T. Ludeling,
JNO. T. LUDELING.
R. N. FAUST.

Signed in the presence of and approved by—
AUSTIN GREEN,
Clerk D. C.

Def't's Appeal Bond. Filed 3rd June, 1882.

THE STATE OF LOUISIANA, *Parish of Ouachita:*

Fifth District Court.

JAMES HAMILTON
vs.
V., S. & P. R. R. Co. } No. 1655.

Know all men by these presents that we, V., S. & Pacific R. R. Co., as principal, and Frank Stubbs, as security, of the parish of Ouachita, are held and firmly bound unto Austin Green, clerk of the fifth dis-

trict court in and for said parish and State, and his successors in office, in the sum of one hundred dollars, lawful money of the United States of America, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, administrator, & assigns,
251 and each of us, *in solido*, firmly by these presents. Dated and signed this 1st June, A. D. 1882.

The condition of the above obligation is such that, whereas the above-bounden V., S. & P. Railroad Co. has applied for and obtained an order for a devolutive appeal from a certain final judgment rendered against it in our said court on the 17th day of April, A. D. 1882, in the above entitled and numbered suit: Now, therefore, if the said V., S. & P. R. R. Co. shall, well and truly, prosecute its said appeal with effect, and shall satisfy whatever judgment may be rendered against it, or that the same shall be satisfied out of the proceeds of the sale of its estate, real and personal; if it be cast in its said appeal, then this obligation to be null & void; otherwise, to be and remain in full force and effect against principal and security.

OTTO PLOCK,
Pres't V., S. & P. R. R. Co.,
By FRANK P. STUBBS.
FRANK P. STUBBS.

Signed in the presence of and approved by—
AUSTIN GREEN, *Clerk D. C.*

252 to 255 THE STATE OF LOUISIANA, *Parish of Ouachita:*

5th District Court.

CLERK'S OFFICE.

I, Austin Green, clerk of said court, do certify that the foregoing 251 pages contain a true, correct, and complete transcript of all the evidence adduced, all the proceedings had, and all the orders, decrees, and judgments in the case number 1655 on the docket of said court, entitled James Hamilton *vs.* The Vicksburg, Shreveport and Pacific Railroad Company.

In faith whereof I hereunto sign my name and affix my seal of office on this 13th day of June, 1882.

[SEAL.] AUSTIN GREEN,
Clerk D. C.

256 *Proceedings in the Supreme Court of Louisiana. Filed June 13th*, 1882.

Transcript in the case of JAMES HAMILTON
vs.
THE VICKSBURG, SHREVEPORT & PACIFIC RAILROAD COMPANY. } No. 1052.

Supreme Court.

MONROE, LA., *June 14th*, 1882.

The court met pursuant to adjournment.

Present: Their honors Edward Bermudez, chief justice; Felix P. Poché, Robert B. Todd, Charles E. Fenner, associate justices.

Minutes June 14th, '82.

JAMES HAMILTON
vs.
THE VICKSBURG, SHREVEPORT & PACIFIC RAILROAD CO. } No. 1052.

This case was called in its regular order on the docket, taken up and argued by Hon. John T. Ludeling & J. H. Dinkgrave for the plaintiff, and by F. P. Stubbs for defendant. The case was then submitted & taken under advisement by the court on the pleadings & on briefs on file.

257 Minutes June 17th, '82.

Supreme Court.

MONROE, LA., *June 17th*, 1882.

Court met pursuant to adjournment.

Present: Their honors Edward Bermudez, chief justice; Felix P. Poché, Robert B. Todd, Charles E. Fenner, associate justices.

Hon. Associate Justice Felix P. Poché read the opinion and decree in the following case:

Decree.

JAMES HAMILTON,
vs.
THE V., S. & P. R. R. COMPANY. } 1052.

It is therefore ordered, adjudged, and decreed that the verdict of the jury be set aside, and the judgment of the lower court annulled, avoided, and reversed; and it is now ordered that pl'ff's demand be rejected and his action dismissed at his costs in both courts.

Supreme Court.

Minute, June 23rd, '82.

MONROE, LA., *June 23rd*, 1882.

The court met pursuant to adjurnment.

Present: Their honors Edward Bermudez, chief justice; Felix P. Poché, Robert B. Todd, Charles E. Fenner, associate justices.

The hon. chief justice read the opinion & decree of the court in the following case:

258 *Rhearing Refused.*

JAMES HAMILTON
vs.
THE V., S. & P. R. R. Co. } 1052.

In this case application for a rehearing is refused.

Opinion and Decree. Filed 17th —, 1882. F. P. P., E. B., R. B. T., Chas. E. F.

JAMES HAMILTON
vs.
THE VICKSBURG, SHREVEPORT & PACIFIC RAILROAD COMPANY.

Appeal from the district court, Ouachita parish.

Plaintiff's object is to recover damages exceeding $1,200, alleged to have been caused him by the defendant corporation in consequence of an unlawful obstruction on the Boeuf river, a navigable stream, on which plaintiff was running a steamboat.

The answer is a general denial, coupled with the special averment that defendant, incorporated under the laws of this State, had the right of building, repairing, and rebuilding necessary bridges over all streams along its line.

The case was tried by a jury who found a verdict of one thousand dollars in favor of plaintiff, and both parties have appealed.

259 Our attention is called to numerous bills of exceptions taken by counsel on both sides, many of which can hardly be considered as serious, and are overruled *in globo*. . .

The objection to the introduction — J. W. Green's testimony, on the ground that the certificate of the Governor of Georgia to the magistrates signature & capacity had not been signed by him, but by his private Secretary, was not well taken. The original document, which is annexed to the transcript, purports to have been signed by the Governor under the seal of the State, and is conclusive as to its veracity and authenticity.

The objection to the right of Green and Preston, shown to be experienced railroad men, to express opinions as to the time necessary to the building of a bridge, and other matter connected therewith, was properly overruled. The witnesses, being experts, were competent to give their opinions on the subject-matter of their examination.

Some irrelevant evidence was admitted, but it will not be considered by us. As the whole case is to be reviewed, both on the law and on the facts, we deem it unnecessary to express a formal

260 opinion on the exception urged by defendant to the judges charge to the jury, as it will be virtually disposed of in our statement of the law governing the case.

The testimony is somewhat conflicting, but after a careful examination of the record we find the following facts to be fully established under the evidence:

A draw-bridge of the company crossing Boeuf river, a navigable stream, having been, on inspection, found decayed, rotten, and unsafe for the use of a railroad, the company determined to rebuild the bridge in the summer of 1880.

The superintendent of the road then entered into a contract with an experienced bridge builder, who undertook to build the bridge during the summer months, when Boeuf river was usually too low for purposes of navigation. Owing to an overflow of the surrounding country, caused by inundations from the Mississippi river, lasting

until the end of April, the work could not be begun before July, after the complete subsidence of the high water. In order to accel-
261 erate the structure, and to avoid any obstruction to navigation, the company stipulated with the contractor for the preparation of the necessary materials at their workshops in Monroe, and for the transportation to the spot as soon as the stage of the water would permit the structure of the bridge.

In order not to suspend travel and through trains, and acting on long experience, which taught the fact that the navigable season on that river usually began at the end of December of each year and ended in July following, and that the construction of a temporary stationary bridge immediately adjoining the bridge under progress of construction would not interfere with navigation, the company built such a temporary structure, on which they ran their trains.

But beginning in August and ending only in December following a very rainy season set in, and swelled the water of the river to almost an unprecedented height for the summer season, & materially impeded the progress of the work, which was, in consequence thereof, not completed till late in December, when under
262 ordinary circumstances it should and would have been terminated in September or early in October, long before the resumption of navigation on the river as a channel of commerce.

By reason of the incessant rains which impeded the work, an unusually early stage of navigable water on the river was obtained in November, when plaintiff undertook to run his boat in his accustomed trade, which was mainly above the bridge, and his passage was obstructed by the temporary stationary bridge of the defendant, and this obstruction lasted during a time in which he could have made four trips between New Orleans and the head of navigation on Boeuf river.

Under this state of things the company did everything in its power to accelerate the construction of its bridge and to remove the obstructions to navigation, by adding to the contractor's force a gang of its own bridge laborers, by working on Sunday, and by trying, even, to do night work.

Now, we hold that, under its charter, by which it was em-
263 powered and authorized to construct, make, and maintain a railroad from a point on the Mississippi river, opposite Vicksburg; thence west to the line of the State of Texas, via Monroe and Shreveport, the company had the undoubted right to build all the necessary bridges across any navigable stream in the course of its line, and that the Legislature had the power to confer such right.

"The grant of power to construct a railway between two points carries authority to cross navigable waters, if that is reasonably necessary in the construction of the works." Redfield, page 322; note 5, Allen, 221.

It is also unquestioned that "the State Legislatures have unlimited power to erect bridges and railways, and make any other public works across navigable waters, subject only to the paramount authority of the National Government." Redfield, 322; People *vs.* Rensellear & Saratoga R. R. Co., 15 Wendell, N. Y., 113; Gilman, Phil-

adelphia, 3 Wall., 713; The Wheeling Bridge Case, 18 Howard, 432; The Blackbird-Creek Marsh Company's case, 2 Peters, 245; Works *vs.* Junction R. R. Co., 5 McLean, 425. These princi-
264 ples, resting on foundations of reason, as well as of law and authority, giving the right to build necessary bridges, necessarily imply not only the right, but the duty of the company to keep and maintain them in such repairs as the public safety may require. Hence the legal right of the defendant company to rebuild the bridge in question, which had been pronounced unsafe by competent authority.

We shall now consider whether, under the circumstances disclosed by the record, the company can be held responsible for the damages occasioned by it to the plaintiff through the delay which it met in the construction of that bridge, which delay became unavoidable, under the unexpected, unforseen, & unprecedented rains which prevailed during the months of August, September, October, November, and December of that year.

This proposition involves the consideration of the question of a party's responsibility in damages for injuries done to another in the pursuit of a legal right, or in the performance of a lawful act,
265 and both on reason and authority, the inquiry must be answered in the negative.

The company had the right to build the temporary bridge, in order to facilitate the structure of the new bridge, and for the purpose of continuing its through trains. If the bridge had been completed, and the obstruction to navigation removed before the resumption of trade on the river, as had been contemplated, and as it was reasonably expected, no one could have complained, as no one had been injured or damaged. The delay was caused by accidents and circumstances over which the company has no possible control, and for which it cannot be held responsible, in justice or in law.

In the case of the Memphis and Ohio R. R. Co. *vs.* Hicks, 5 Sneed, Tennessee, p. 427, it was held: "That the provision in the charter of a railway company authorizing it to bridge a navigable stream, provided that the navigation of the stream shall not be obstructed, is not violated by a temporary obstruction of the stream by scaffolding, &c., in the construction of the bridge." The present case presents circumstances clearly entitling the defendant to the
266 protection of the rule of "*damnum absque injuria*," and we are therefore compelled to exonerate it from any responsibility for the damages resulting from the temporary obstruction of the navigation of Boeuf river, in its attempt to rebuild a necessary bridge. (Ransom *vs.* La Oranche, 16 A., 121; 11 A., 711; 15 A., 559; 27 A., 442; Week's *Absque Injuria*, par. 48, 49.)

This conclusion eliminates from discussion the question of the damages which plaintiff may or not have suffered from the obstruction of the river, which is thus shown not to have been unlawful.

It is therefore ordered, adjudged, and decreed that the verdict of the jury be set aside and the judgment of the lower court annulled, avoided, and reversed, and it is now ordered that plaintiff's demand be rejected & his action dismissed at his costs in both courts.

Opinion on Application for Rehearing. Ch. E. F. F. P. P. E. B. R. B. T. Filed June 17th, 1882.

Report in full.

JAMES HAMILTON
vs.
THE VICKSBURG, SHREVEPORT & PACIFIC RAILROAD COMPANY. } No. 1052.

267 It is proper to state that in this case the evidence establishes that Boeuf river, the stream across which the bridge was built, lies, as a navigable stream, wholly within the limits of the State of Louisiana, although the upper portion of the stream itself lies in Arkansas. It is not navigable, & has never been navigated as high up as the Arkansas line. The authority of Congress over navigable streams is an incident of the power to regulate commerce among the States, and only effects rivers which are highways of commerce between different States; as to streams which are navigable only within the limits of a single State the authority of its Legislature is complete. Penn. *vs.* Wheeling Bridge Co., 18 How., 432; 1 Redfield on Railways, §78, notes and authorities cited.

This makes it clear that in the instant case the authority derived from the legislative action of the State did not conflict under any view with any paramount authority of the Federal Government.

Rehearing refused.

268 *Syllabus. Filed June 17th,* 1882.

The State Legislature has unlimited power to erect bridges and railways, and make any other public works across navigable waters, subject only to the paramount authority of the National Government.

The power granted by the Legislature to a railway company to build a road between two points carries authority to cross navigable waters and to build necessary drawbridges, and the authority implies the right and imposes the duty to maintain and repair or rebuild such bridges. A railway company having authority to build or rebuild a bridge across a navigable stream is not responsible in damages for temporary obstructions of the stream by scaffolding or by the construction of a temporary, stationary bridge and for unavoidable delay in the completion of the bridge.

269 *Petition for Writ of Error. Filed Ap'l 3rd,* 1883.

To the honorable the chief justice of the supreme court of Louisiana:

The petition of James Hamilton, a resident of the parish of Orleans, State of Louisiana, with respect represents that at the last term of the supreme court of the State of Louisiana, in June, 1882, a final judgment was rendered by the supreme court in the case of James Hamilton *vs.* The Vicksburg, Shreveport & Pacific Railroad Company against the plaintiff. Petitioner avers that he is informed and he believes that said judgment is contrary to law & is injurious

to him; that said judgment is the judgment in a suit in the highest court of the State in which a decision in the suit could be had; that there was drawn in questiou the validity of a statute of or an authority exercised under the State (to wit, the authority to obstruct the navigation of Boeuf river under the charter of the Vicksburg, Shreveport & Pacific Railroad Company, granted by an act of the Legislature of the State in 1856), & the decision was in favor of the validity of said act & the authority exercised under it, & in which suit was also drawn in question the right and privilege
270 claimed under acts of Congress (to wit, section 5251 of the U. S. R. Statutes & the act admitting Louisiana into the Union), and the decision was against the right & privilege claimed by petitioner, to wit, the right to navigate Boeuf river, a navigable stream running through Chicot county, Arkansas, & the State of Louisiana, into the Ouachita, and thence to the Mississppi river & the Gulf of Mexico. Petitioner avers further that the amount in dispute is $12.125.56.

He alleges that he wishes to have said judgment revised & corrected by the Supreme Court of the United States.

Wherefore he prays that a writ of error may be allowed in said suit, directed to the supreme court of the State of Louisiana & returnable to the Supreme Court of the United States of America, at Washington, D. C., on the 2nd Monday of October next, according to law.

He prays that the amount of the bond for a writ of error for costs be fixed & for general relief, &c.

JOHN T. LUDELING, *Att'y.*

JAMES HAMILTON *vs.* THE V. S. & PACIFIC R. R. Co.

Let the writ be allowed, as prayed for, on plaintiff giving
271 bond in the sum of five hundred dollars, conditioned according to law.

New Orleans, March 27th, 1883.

E. BERMUDEZ,
Chief Justice.

Bond for Writ of Error. Filed April 3rd, 1883.

Know all men by these presents that we, James Hamilton, of the parish of Orleans & State of Louisiana, as principal, and R. M. Faust, of the parish of Ouachita, State of Louisiana, as surety, are held and firmly bound unto the Vicksburg, Shreveport & Pacific Railroad Company, domiciliated at Monroe, Louisiana, in the full and just sum of five hundred dollars to be paid to the said Vicksburg, Shreveport & Texas Pacific Railroad Company, their certain attorney, executors, administrators, or assigns, to which payment, well & truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of March, in the year of our Lord one thousand eight hundred and eighty three.

Whereas lately at the supreme court of the State of Louisiana, hold-

ing session at Monroe, La., in a suit pending in said supreme
272 court wherein James Hamilton was plaintiff, & Vicksburg, Shreveport and Pacific Railroad Company was defendant, jugdment was rendered against James Hamilton, plaintiff; and the said James Hamilton, plaintiff, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said Supreme Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Vicksburg, Shreveport and Pacific Railroad Company, citing and admonishing said company to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said James Hamilton, of the parish of Orleans, shall prosecute his writ to effect, and answer all cost if he fail to make his plea good, then the above obligation to be void, else to remain in full force & virtue.

Word "three" erased and "five" inserted, in eighth line, approved before signing.

JAMES HAMILTON. [L. S.]
RUSSELL M. FAUST. [L. S.]

Sealed and delivered in the presence of—
T. McC. HYMAN.

Approved:

E. BERMUDEZ,
Chief Justice S. C., La.

273 UNITED STATES OF AMERICA, } *ss:*
District of Louisiana, }

Personally appeared Russell M. Faust, who, being sworn, deposes and says that he is the surety on the within bond; that he resides in the parish of Ouachita, State of Louisiana, and is worth the full sum of five hundred dollars over and above all his debts and liabilities, and property exempt from execution.

RUSSELL M. FAUST.

Subscribed and sworn before me at New Orleans this 28th day of March, 1883.

[SEAL.]

T. McC. HYMAN,
D'y Clerk Supreme Court, La.

Writ of Error. Filed April 3rd, 1883.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Louisiana, before you, or some of you, *or some of you,*
274 being the highest court of law or equity of the said State in which a decision could be had in the said suit between James Hamilton & the Vicksburg, Shreveport & Pacific Railroad Company, wherein was drawn in question the validity of statutes

of or an authority exercised under the United States, and the decision was against their validity, & wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such of their validity; wherein was drawn in question the construction of a statutes of the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such statutes, a manifest error hath happened, to the great damage of the said James Hamilton, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then,

under your seal, distinctly and openly, you send the record
275 and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 27 day of March, in the year of our Lord one thousand eight hundred and eighty-three.

[SEAL.] WM. RAY,
D'y Clerk of the Circuit Court of the United States
for the Western District of Louisiana, 5th Judicial Dist.

276 *Citation. Filed April 3rd,* 1883.

THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial District, Western District of Louisiana.

The President of the United States to the president of the Vicksburg, Shreveport & Pacific Railroad Company, domiciliated at Monroe, State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the 2nd Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein James Hamilton, of the parish of Orleans, State of Louisiana, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said James Hamilton, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this — day of March, in

the year of our Lord one thousand eight hundred and
277 eighty-three.

E. BERMUDEZ,
Chief Justice Supreme Court, La.

Marshal's Return on Citation.

Received the within citation, together with a certified copy of the same, in office on 4th —, 1883, and on the 7th day of April, 1883, of same month & year I made service of a certified copy of the within citation on F. S. Dabney, sup't of the V., S. & P. R. R. Co., in person, at his office in the city of Monroe.

W. R. LEWIS,
D'y U. S. Marshal.

The corrections in the 1st & 6th lines, erasing " writ of error " and inserting citation, was made by me to correct a mistake made by me.

R. J. WILLSON, *Cl'k of C't.*

278 STATE OF LOUISIANA, *Parish of Ouachita:*

I, Robert J. Willson, clerk of the supreme court of the State of Louisiana, holding sessions at Monroe, La., do hereby certify that the foregoing 277 pages, from 1 to 277, inclusive, contain a true, accurate, and complete copy of the transcript in the case entitled James Hamilton *vs.* The Vicksburg, Shreveport & Pacific Railroad Company, sent up on appeal from the 5th district court of the State of Louisiana to the supreme court of said State, holding sessions at Monroe, La., together with a true, correct, and accurate copy of all the documents filed, proceedings had, and all the orders, minutes, decrees, and judgments in said case No. 1052 on the docket of said supreme court entitled James Hamilton *vs.* The Vicksburg, Shreveport & Pacific Railroad Company.

In testimony whereof I hereunto set my official signature and affix the seal of said court, at the city of Monroe, La., on this the 16th day of July, A. D. 1883.

[Seal Supreme Court of the State of Louisiana.]

ROB. J. WILLSON,
Clerk Supreme Court, Monroe, La.

279 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial District, Western District of Louisiana.

The President of the United States to the president of the Vicksburg, Shreveport, & Pacific Railroad Company, domiciliated at Monroe, State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of

Louisiana, wherein James Hamilton, of the parish of Orleans, State of Louisiana, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said James Hamilton, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this — day of March, in the year of our Lord one thousand eight hundred and eighty-three.

E. BERMUDEZ,
Chief Justice, Supreme Court, La.

279½ Received the within citation, together with a certified copy of same, in office, on 7 April, 1883, & on the 7th day of April, 1883, & of same month & year, I made service of a certified copy of the within citation on F. G. Dabney, sup't of the V., S. & P. R. R. Co., in person, at his office in the city of Monroe, La.

W. R. LEWIS,
D'y U. S. Marshal.

The corrections in the first and fifth lines *was* corrected by me.

W. R. LEWIS,
D'y U. S. Marshal.

[Endorsed:] United States circuit court. No. —. James Hamilton *vs.* The V., S. & Pacific R. R. Co. Citation. Marshal's return. Filed April 3d, 1883. J. Ganett, d'y clerk, supreme court of La.

280 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Louisiana before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between James Hamilton & the Vicksburg, Shreveport & Pacific Railroad Company, wherein was drawn in question the validity of statutes of, or an authority exercised under, the United States, and the decision was against their validity; wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity; wherein was drawn in ques-

281 tion the construction of a statutes of the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such statute, a manifest error hath happened, to the great damage of said James Hamilton, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you

send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being nspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 27th day of March, in the year of our Lord, one thousand eight hundred and eighty-three.

[Seal U. S. Circuit Court for the Western Dist. of La.]

WM. RAY,

D'y Clerk of the Circuit Court of the United States for the Western District of Louisiana, Fifth Judicial Dist.

282 [Endorsed:] James Hamilton *versus* The Vicksburg, Shreveport & Pacific Railroad Company. Writ of Error. Filed April 3d, 1883. J. Ganett, d'y clerk supreme court of La.

283 *Assignment of Errors.*

Supreme Court of the United States.

The plaintiff in error makes the following assignment of errors:

I. That the defendant claims the right to obstruct the navigation of Bocuf river, a navigable stream in the States of Louisiana & Arkansas, under the section of the charter granted to the Vicksburg, Shreveport & Texas R. R. Co., which authorized that company to construct, make, & maintain a railroad from a point opposite Vicksburg to the line of the State of Texas, via Monroe & Shreveport; & the state court held that "the company had the undoubted right to build all necessary bridges across any navigable stream in the course of its line, & that the Legislature had the power to confer such right."

The plaintiff avers that this is error, because it is repugnant to the treaties & laws of the United States. The navigable rivers and waters in the territory of Orleans & Louisiana are made
284 common highways by act of 3d March, 1811; the Mississippi, and the navigable rivers and waters leading into the same, or into the Gulf of Mexico, are made common highways & forever free, &c., by compact with the State of Louisiana irrevocable without the consent of the United States, by act of 20th Feb., 1811, & 8th April, 1812; as also by a fundamental provision in the act of 1st March, 1817, "to enable the people of the western part of the Mississippi territory to form a constitution & State government, &c., & the Mississippi & Missouri rivers, & the navigable waters running into them, & the carrying place between them, are made common highways by the act of 4th June, 1812, "providing for the government of the territory of Missouri."

By sec. 5251 of the Revised Statutes of the United States it is declared that "all the navigable rivers & waters in the former terri-

tories of Orleans & Louisiana shall be, & forever remain, public highways."

285 II. The plaintiff claims the right, under the above-mentioned treaties & acts of Congress, to navigate Boeuf river, running through Chicot county, Ark., & the State of Louisiana, into the Ouachita river & the Gulf of Mexico, which right & privilege has been denied him by the decision of the State supreme court, to his great injury, & contrary to the treaties & laws of the United States above-mentioned.

Wherefore plaintiff prays that the errors of the State court may be corrected, & that judgment be rendered in his favor for the damages done him by the acts of the defendant & for general relief, &c.

JNO. T. LUDELING,
Att'y & Counsellor for Plaintiff in Error.

286 [Endorsed:] Supreme Court U. S. 1883, October term. No. 259. James Hamilton, pl'ff in error, *vs.* The Vicksburg, Shreveport & Texas Railroad Co. Assignment of error. Filed 17th Aug., 1883.

Endorsed on cover: Louisiana Sup. Court. No. 259. James Hamilton, plaintiff in error, *vs.* The Vicksburg, Shreveport & Pacific Railroad Company. Filed August 17th, 1883.

119-20

FILED
APR 15 1886
JAMES. H. McKENNEY,
CLERK.

Supreme Court of the United States.

JAMES HAMILTON, Plaintiff in Error,

vs.

THE V., S. & T. P. R. R. Co., Defendant.

JOHN T. LUDELING.

BULLETIN Job Print, Monroe, La.

JAMES HAMILTON, Plaintiff in Error,

vs.

THE V., S. & T. P. R. R. Co., Defendant.

I.

The plaintiff is the owner and captain of the steamboat Era No. 10. His business was, and had been during several years, to run his boat in Bœuf river, between Eason's Ferry, on Lake Lafourche, and New Orleans, carrying cotton and passengers from Eason's Ferry to New Orleans, and dry goods, bagging, ties, provisions and passengers from New Orleans to Eason's Ferry and intermediate landings.

The period when navigation is open in this river is from October to May—sometimes a little earlier and sometimes later.

Eason's Ferry is the "landing" or shipping point, on Lake Lafourche, for the town of Oak Ridge and the rich surrounding country. Thence to Point Jefferson, on Bœuf river, is about fifteen miles. From Point Jefferson to the Railroad bridge, is 40 miles—from the bridge to the mouth of Bœuf river, is one hundred and eighty miles—or 224 miles from Point Jefferson to where it empties into the Ouachita river. Steamboats generally do not go higher up Bœuf river than Point Jefferson, because, as yet, there has been no business for them above that point. The evidence in the record shows that it is *capable of being navigated* by steamboats, barges, flatboats and rafts into the State of Arkansas, during several months of the year.

The river runs through Chicot county, Arkansas—and its banks are meandered by the United States Surveyors, in the surveys of the public lands, as required by Act of Congress in surveys of lands through which *navigable* streams run. Revised Statutes, par. 2395.

McVeigh, a witness, testified that he was well acquainted with the river, as far up as Eason's Ferry; that he has been up said river as high as in Chicot county, Arkansas; that during the rebellion his company camped on the banks of Bœuf river, near the State line, in Arkansas, he thinks, and that the river there seemed to be as wide and as deep as at the bridge and below. R., p. 49.

Jones, a witness for defendant, testified that he had been as far up the river as 30 or 40 miles above Point Jefferson. He states "at the highest ferry I crossed, it is a good deal smaller than below. In high water, if there was nothing else to prevent it, small (steam) boats might go up as far as where I crossed it. I know of nothing to prevent it." R., p. 33.

The southern boundary of the State of Arkansas is township twenty-three, and Point Jefferson is near northern limits of section 30, township 19, R. 8 east, so that forty miles above Point Jefferson must be near the line.

The fact *is* that Bœuf river is navigable for small steamboats and other crafts far into the State of Arkansas several months every winter.

In the summer of 1880, the V., S. & P. R. R. Co., wishing to repair its bridge across Bœuf river, which was a draw-bridge, and disregarding the rights of others, build another, and a stationary bridge, across said river for its own use, and thus completely obstructed the navigation of Bœuf river, during five or six months.

On the 10th of November, James Hamilton, with his steamboat Era No. 10, came up Bœuf river to the bridge, but he could not pass up; and he was obliged to return to New Orleans, without reaching his destination, Eason's Ferry.

From that time till the 22d December, the navigation of the river was obstructed by said stationary bridge; while the Railroad Company leisurely repaired its draw-bridge, and carried

away the freight and passengers which would have been carried by the Era No. 10, but for the obstruction.

The Superintendent of the Railroad Company, realizing the the wrong done the owner of Era No. 10, proposed to pay him an insignificant sum per trip during the time he was prevented from going to Eason's Ferry—which, of course, he declined.—Even if the sum had been adequate to recompense him for the freights lost, he could not have accepted it, without ruining his business as a steamboatman in that trade. As it was, he was suspected of colluding with the Railroad Company, because he did not remove the obstruction *by force*.

The evidence shows that the Era No. 10 came to the bridge on two trips, but could not pass the bridge, and that she lay up in New Orleans, paying port dues and salaries to officers, waiting for the removal of the obstruction to the free navigation of the river till 22d December, 1880.

The evidence shows that the boat would have made four trips to Eason's Ferry, during the time the river was obstructed by the bridge, but for the obstruction.

The plaintiff demanded, in writing, of the Company the removal of the obstruction of the navigation of the river, each time he came to the bridge.

The plaintiff then sued the defendant for the losses sustained, which he specified, and which he proved, aggregating $12,125.56.

The defendant claimed that the Legislature of Louisiana had granted the Company *the right to build a railroad from the Mississippi over to the western boundary of the State of Louisiana*, and that said grant *implied* the right to bridge rivers and to obstruct absolutely the navigation of Bœuf river during four or five months, to repair its bridge, and that the loss resulting from said obstruction of the navigation of the river was "*damnum absque injuria.*"

The jury gave plaintiff a verdict for $1000 damages. Plaintiff appealed to the Supreme Court of the State. That Court held that "the Company had the undoubted right to build all necessary bridges across any navigable stream in the course of its line, and *that the Legislature* had the power to confer such right." 34. An., p. 973.

On rehearing, the Court said: "The authority of Congress over navigable streams is an incident of the power to regulate commerce *among the States*, and only affects rivers which are highways of commerce between the different States. As to streams which are *navigable only within the limits of a single State*, the authority of its Legislature is complete." 34. An., p. 975.

II.

The defendant claims the right to obstruct the navigation of Bœuf river, a navigable stream in the States of *Louisiana and Arkansas*, under the section of the charter granted to the Vicksburg, Shreveport & Texas Railroad Company, which authorized the Company to construct, make and maintain a railroad from a point opposite Vicksburg to the State of Texas; and State Court held that under that grant "the Company had the undoubted right to build all necessary bridges across any navigable streams in the course of its line; and that the Legislature had the power to confer such right."

The plaintiff avers that this is wrong, because it is repugnant to the constitution and laws of the United States, and compacts between the States of Louisiana, Arkansas, Mississippi, Missouri, etc., with the United States.

Constitution of the United States, Art. 1, Sec. 8, Par. 3, gives Congress the right to declare what are national rivers and to regulate the commerce therein.

The 14th Amendment guarantees to every citizen of the

United States the privilege to navigate all public waters of the United States. 16 Wall., 79.

By the Act of Congress, approved 8th April, 1812, it is declared "That it shall be taken as a condition upon which the State is incorporated into the Union, that the river Mississippi, and *the navigable rivers and waters leading into the same*, and into the Gulf of Mexico, shall be *common highways*, and *forever free*, as well to the inhabitants of said State as to *the inhabitants of other States, and the territories of the United States*, without any tax, duty, impost or toll therefor, imposed by the said State."

The navigable rivers and waters in the territories of Orleans and Louisiana are made public highways by Act of 3d March, 1811; the Mississippi and navigable rivers and waters leading into the same, or into the Gulf of Mexico, are made *public highways*, and forever free, etc., by Act of 20th February, 1811; as also by provision of Act of 1st March, 1817, and by Act of 4th June, 1812, providing for government of territories of Mississippi and Missouri. Gordon's Digest, p. 640, Note.

Again by *Section 5251 of the Revised Statutes of the United States*, it is declared that "*All the navigable rivers and waters in the former territories of Orleans and Louisiana shall be and forever remain public highways.*"

By Section 2476 of Revised Statutes U. S., it is declared that "All navigable rivers, within the territory occupied by the public lands, shall remain and be deemed *public highways*," &c.

Congress has repeatedly made appropriations for the improvement of the navigation of Bœuf river.

Second—The plaintiff, under the Constitution of the United States, regulating commerce among the States, etc., and the above mentioned Acts of Congress, claims the right to navigate Bœuf river, which extends through Chicot county, Arkansas, and part of the State of Louisiana, into the Ouachita river,

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thence into the Mississippi river and the Gulf of Mexico. This right has been denied him by the decision of the Supreme Court of the State of Louisiana, holding, as already stated above, that under the grant by the State of the right to build a railroad, defendant could lawfully obstruct the navigation of Bœuf river.

III.

It is submitted that Bœuf river is a navigable river, which takes its rise in the State of Arkansas, traverses Chicot county, Arkansas, and Morehouse parish, Louisiana, and thence to the Ouachita river, which empties in the Red and thence into the Mississippi river.

The evidence shows that it has been navigated during many years by steamboats, as far up as Eason's Ferry, fifty miles above the Railroad bridge; and that *it is capable of being navigated by steamboats* up into the State of Arkansas.

When the public lands, along the banks of Bœuf river, both in the State of Arkansas and in the State of Louisiana, were surveyed, the banks of said river were meandered, and the lines surveyed were not extended across said river, as the law required, if the stream be not navigable. Sec. 2395 of Revised Statutes of U. S.; Lester's Land Law, p. 714.

The plaintiff has been running his boats in the Bœuf river trade many years. His steamboat Era No. 10, with a capacity of 278 tons, or 1250 bales of cotton, was duly enrolled and *licensed*, in pursuance to the laws of the United States, and was regularly cleared, at the Port of New Orleans, for Eason's Ferry.

In the case of the Montibello, reported in 20 Wallace, the Supreme Court said, "This Court held in the case of the *Daniel Ball*, that *those rivers must be regarded as public navigable rivers in law, which are navigable in fact.* And they

are navigable in fact when they are used, or *are susceptible of being used*, in their ordinary condition, as highways for commerce, over which trade and travel are *or may be* conducted in the customary modes of trade and travel on water. And a river *is a navigable water of the United States when it forms by itself, or by its connection with other waters, a continuous highway over which commerce is, or may be, carried with other States or foreign countries in the customary modes in which such commerce is conducted by water.*" And, independently of the Ordinance of 1787, declaring the "navigable waters, leading into the Mississippi and St. Lawrence to be common highways," the true test of the navigability of a stream does not depend on the mode by which commerce is, or may be conducted, nor the difficulty attending navigation. If these were so, the public would be deprived of the use of many of the large rivers of the country over which rafts of lumber of great value are constantly taken to market.

It would be a narrow rule to hold that in this country, unless a river was capable of being navigated by steam or sail vessels, it could not be treated as a public highway. The *capability of use by the public for purposes of transportation and commerce affords the true criterion of the navigability of a river, rather than to the extent and manner of that use.* If it be capable in its natural state of being used for purposes of commerce, no matter in what mode the commerce may be conducted, it is navigable in fact, and becomes in law a public river or highway. Vessels of any kind that can float upon the water propelled by animal power, by the wind, or by the agency of steam, are, or may become, the mode by which a vast commerce can be conducted, and it would be a mischievous rule that would exclude either in determiing the navigability of a river." 20 Wall., 441.

In the case of Little Rock Railroad Co. vs. Brooks, 39 Ark., 403, the Court said, "The result of the authorities is this, that usefulness for purposes of transportation, for rafts, boats, or barges, gives navigable character, reference being had to its natural state, rather than to its average depth the year round. The Montibello, 20 Wall., 430; the Daniel Ball, 10 Wall., 557; Moore vs. Sanborne, 2 Mich., 519; Morgan vs. King, 35 New York, 454; Browne vs. Chadborne, 31 Me., 9." See also Walker vs. Allen, Alabama Reports, and Geo. Ingram vs. Police Jury, 20 An., 226.

It is submitted that the evidence in the record shows that Bœuf river is capable of being navigated by small steamboats, barges, flats and rafts, several months every winter, in Arkansas, and that it is navigated regularly by steamboats to Point Jefferson in Louisiana, and that steamboats have gone above that point. The river is at least 25 feet deep at Point Jefferson and below. But if the evidence were not full upon that point, it is submitted that the Court is bound to take judicial cognizance of the navigability of the river. Greenleaf in his work on evidence, vol. 1, sec. 6, says: "In fines, courts will generally take notice of whatever ought to be generally known within the limits of their jurisdiction."

In Lake Co. vs. Yung, 40 N. H., 420, it was held that courts take notice of the civil divisions of the States, such as counties and townships, and of its great geographical features, as of large lakes, rivers and mountains. In Atwater vs. Schenck, 9 Wis., 160, it was ruled that judicial notice would be taken of the government surveys and the legal subdivisions of public lands. In the *Peterhoff*, Blotchford's Prize cases, 463, it was held that the Court will take judicial notice of the situation of a town in a foreign country, and that a bar exists at the mouth of the river at which it lies, which vessels of the draught of the vessel libeled cannot cross. In Mossman vs.

Forrest, 27 Ind., 233, it was decided that Courts will take judicial notice of the permanent geographical facts and features of the country. See also Railroad Co. vs. Stevens, 28 Ind., 429; Wright vs. Hawkins, 28 Texas, 452.

In Neaderhauser vs. State, 28 Ind., 257, the Court held that Courts will take judicial notice of the navigability of streams. See also McManus vs. Carmichael, 3 Iowa 1, and Wood vs. Fowler, 26 Kansas Rep., 13 Howard, 561.

"The power vested in the general government to regulate interstate and foreign commerce, *involves the control of the waters of the United States, which are navigable in fact, so far as it may be necessary to insure their free navigation*, when by themselves, or their connections with other waters they form a continuous channel for commerce among the States or with foreign countries." The Daniel Ball, 10 Wall., 557; 17 Otto, p. 682.

"If the power of the State and that of the Federal government come in conflict, the latter must control." 17 Otto, p. 683.

There can be no doubt that the grant by the State to the Railroad Company, *as construed by the Supreme Court of the State*, conflicts with the laws of Congress before mentioned, declaring Bœuf river a public highway and free to all. Whether that construction be right or not, the mischief is the same in this case. I am aware that in Escanoba Co. vs. Chicago, and Cardwell vs. American River Company, this Court held that the provisions in the Ordinance of 1787, and in the Act of 9th September, 1850, admitting California into the Union, similar to those referred to therein, admitting Louisiana, Mississippi and other States into the Union, "must be considered as in no way impairing the power which the State could exercise over the subject, if the clause had no existence," because the States

are "admitted into the Union on equal footing with the original States *in all respects whatever.*" "The cases cited in support of that conclusion are Pollard vs. Hagan, 3 How., 212; Permoli vs. New Orleans, 3 How. 589; and Strader vs. Graham, 10 How., 82.

In the first case it was held that Congress cannot by any compact or condition made with or laid upon a State in her admission into the Union, restrain or limit her municipal power as a State, but that, *if the subject of the compact or condition is within the power of Congress to enact or regulate*, without the consent of the State, *as to declare that navigable waters therein shall be common highways*, it is as good as a law."

In the *Permoli* case, which related to the clause securing religious freedom to the inhabitants, and in the Strader case, which related to the status of a negro, the Court held that the provisions of the Act of Congress had no effect in the States, after their admission into the Union, for the manifest reason that Congress had no right to legislate on those subjects in States. But in the case of Pollard vs. Hagan, "it was destinctly decided that the clause in the ordinance, as applied to Alabama by the Act of Congress of 2d March, 1819, authorizing the people of that territory to form a constitution, declaring the navigable waters of the future State common highways, was not such a condition (as would limit or restrain its municipal power and right, as compared with the other States therein) but a valid law, which Congress had the power to enact, whether the waters were within a State or Territory." Wallamet Iron Bridge Co. vs. Hatch; (Judges Deady and Sawyer) Federal Reporter, p. 357, March 25, 1884.

In the case of Pollard vs. Hagan, the Court said: "The argument, so much relied on by the counsel for the plaintiffs, that the agreement of the people inhabiting the new States,

that they forever disclaim all right and title to the waste and unappropriated lands lying within said territory; and the same shall be and remain at the sole disposition of the United States, cannot operate *as a contract* between the parties, *but is binding as a law.*" Full power is given Congress "to make all needful rules and regulations respecting the territory or other property of the United States." P. 397. Again the Court said: "The declaration, therefore, contained in the compact entered into between them when Alabama was admitted into the Union, "that all navigable waters within the said State shall forever remain public highways, free to the inhabitants of said State and of the United States, without any tax, duty, imposts or toll therefor, imposed by said State, would be be void, *if inconsistent* with the Constitution of the United States. But is this provision repugnant to the Constitution? By Section 8, Art. I of the Constitution, *power is granted* to Congress "*to regulate commerce with foreign nations, and among the several States.*" *If, in the exercise of this power, Congress can impose the same restrictions upon the original States, in relation to their national waters, as are imposed by this article of the compact on the State of Alabama, then this article is a mere regulation of commerce among the several States, according to the Constitution, and, therefore, as binding on the other States as Alabama.*" * * P. 402. * * * "As the provision of what is called the compact between the United States and the State of Alabama does not, by the above reasoning, exceed the power thereby conceded to Congress over the original States on the same subject, no power or right was, by the compact, intended to be reserved by the United States or to be granted to them by Alabama. This supposed compact is, therefore, *nothing more than a regulation of commerce to that extent, among the several States,*" etc., p. 403.

In Cordwell vs. American Iron Bridge Co., this Court said: "But upon the mature and careful consideration which we have given in this case to the language of the clause in the Act admitting California, we are of opinion that if we treat the clause as divisible into two provisions they must be construed together as having but one object, namely, *to insure a highway* EQUALLY *open to all without preference to any*, and unobstructed by duties or tolls, and thus prevent the use of the navigable streams by private parties to the exclusion of the public, and the exaction of any toll for their navigation," etc. Supreme Court Reporter, vol. 5, Feb., part XI, p. 426.

But, it is submitted, that whatever may be the construction or effect of the clause in the Acts of Congress above referred to for the admission of the States of Louisiana, Mississippi, Alabama, Missouri, etc., Congress has since the admission of Louisiana into the Union legislated upon the subject of the navigation of Bœuf river. In the Revised Statutes of the United States of 1878, it is declared:

"All navigable rivers, within the territory occupied by public lands, shall remain and be deemed public highways," etc. Par. 2476.

"All the navigable rivers and waters in the former territory of Orleans and Louisiana shall be and forever remain public highways." Par. 5251.

Congress has repeatedly made appropriations for the improvement of the navigation of Bœuf river; and all steamboats running in the river are required to take out a license from the authorities of the United States.

In Escanoba Co. vs. Chicago the Court say the decision in the case of Wilson vs. The Black Bird Creek Marsh Co., 2 Peters, "was based entirely upon the absence of any legislation of Congress upon the subject." 17 Otto, p. 684. And

the following passage from Chief Justice Marshall's opinion was quoted: "If Congress had passed any Act which bore upon the case, any Act in execution of the power to regulate commerce, the object of which was to control State legislation over those small navigable creeks, into which tide floats, and which abound throughout the lower country of the Middle and Southern States, *we should feel not much difficulty that a State law, coming in conflict with such an Act, would be void.*" 17 Otto, p. 684.

In the Black Bird Creek Marsh Co. case, in Gilman vs. Philadelphia, Pound vs. Turck, Escanaba Co. vs. Chicago, and Cardwell vs. American River Bridge Co., the rivers bridged or regulated by the States were *entirely within a single State* or local in their character. The Court said: "Bridges over navigable streams, which *are entirely within the limits of the State*, are of the latter class." 17 Otto, 687. *E. Converso*, , Rivers running through *two* or *more States* are not. Bœuf river, as already stated, rises in Arkansas, near Lake Village, runs through Chicot county 40 or 50 miles, and through part of Louisiana and thence to the Gulf of Mexico.

Citizens of Arkansas, living on or near the bank of Bœuf river would be prevented by said bridge from carrying their products, or barges, or rafts, or small steamboats to market at New Orleans or Europe or in the Eastern or Western States, as they would otherwise be able to do, were the navigation of Bœuf river unobstructed by the bridge, as said river forms a a continuous channel for commerce with foreign countries, and among the other States, through its connection with the Ouachita, Red and Mississippi rivers and the Gulf of Mexico, etc.

In the Slaughter House cases this Court mentioned some of the privileges and immunities "which owe their existence to the Federal Government, its national character, its constitution, or

its laws" and which are guaranteed by the 14th Amendment. Among them was mentioned "the right to use the *navigable waters of the United States*, however they may penetrate the territory of the several States." 16 Wall., 79.

"All navigable rivers and waters in the former territory of Orleans and Louisiana shall be and forever remain public highways." An obstructed river cannot be a public highway, and "All erections and impediments made by the owners, to the obstruction of the free use of the river as a highway for boats and rafts, are deemed nuisances." Kent's Com., vol. 3, p. 411.

In conclusion, it is submitted that the construction by the State Court of the Act of the Legislature authorizing the building of a railroad across the State of Louisiana is erroneous. If the grant can be held to imply the right to build *suitable* bridges, it ought not to be held to imply the total obstruction of a river. But, right or wrong, the decision denies a plain right, guaranteed to every one, to navigate all navigable rivers and waters in Louisiana. Slaughter House case, 16 Wall., 79.

The distinguishing differences between the Black Bird Creek Marsh Co. case, the Gilman vs. Philadelphia, Escanaba Co. vs. Chicago, and Cordwell vs. American River Bridge Co. cases, and the present, are that in the cases decided, the stream or river was *entirely within the limits of a single State*, and Congress *had not legislated* on the subject to prevent the obstruction of the navigation of said rivers—whereas, in this case the river is not within the limits of a single State, but runs through parts of two States, and Congress has legislated and declared that the river shall be and remain forever a public highway, and has made appropriations for the improvement of the river repeatedly.

Respectfully submitted,

JOHN T. LUDELING,
Attorney and Counsellor.

its laws'' and which are guaranteed by the 14th Amendment. Among them was mentioned "the right to use the *navigable waters of the United States*, however they may penetrate the territory of the several States." 16 Wall., 79.

"All navigable rivers and waters in the former territory of Orleans and Louisiana shall be and forever remain public highways." An obstructed river cannot be a public highway, and "All erections and impediments made by the owners, to the obstruction of the free use of the river as a highway for boats and rafts, are deemed nuisances." Kent's Com., vol. 3, p. 411.

In conclusion, it is submitted that the construction by the State Court of the Act of the Legislature authorizing the building of a railroad across the State of Louisiana is erroneous. If the grant can be held to imply the right to build *suitable* bridges, it ought not to be held to imply the total obstruction of a river. But, right or wrong, the decision denies a plain right, guaranteed to every one, to navigate all navigable rivers and waters in Louisiana. Slaughter House case, 16 Wall., 79.

The distinguishing differences between the Black Bird Creek Marsh Co. case, the Gilman vs. Philadelphia, Escanaba Co. vs. Chicago, and Cordwell vs. American River Bridge Co. cases, and the present, are that in the cases decided, the stream or river was *entirely within the limits of a single State*, and Congress *had not legislated* on the subject to prevent the obstruction of the navigation of said rivers—whereas, in this case the river is not within the limits of a single State, but runs through parts of two States, and Congress has legislated and declared that the river shall be and remain forever a public highway, and has made appropriations for the improvement of the river repeatedly.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1885.

James Hamilton,
Plaintiff in Error,

No. 259. *vs.*

The Vicksburg, Shreveport and Pacific Railroad Company,
Defendant in Error.

In Error to the Supreme Court of the State of Louisiana.

ARGUMENT FOR DEFENDANT IN ERROR.

GEORGE HOADLY,
EDGAR M. JOHNSON,
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STATEMENT OF CASE.

This action comes into this court on error to the Supreme Court of the State of Louisiana on the following state of facts:

The Vicksburg, Shreveport and Texas Railroad Company was chartered by an act of the legislature of Louisiana, approved February 20, 1853, with authority to build a railroad from a point opposite Vicksburg, by way of Monroe and Shreveport, to the Texas state line. In pursuance of the charter it had built a railway from Delta,

Louisiana, to Monroe, Louisiana, which by various conveyances had come to be the property of the Vicksburg, Shreveport and Pacific Railroad Company, the defendant in error.

On the line of this railway it is necessary to cross a small stream called Boeuf river, one of the tributaries of the Ouachita river, which is navigable during about six months in the year. This was done by means of a draw-bridge, which had become so old and worn that in the spring of 1880 it was finally decided to replace it by a new bridge. Accordingly a contract was made with J. H. Rembold to build the new bridge, and during the construction thereof to carry the track on a temporary pile trestle, to be built under the old bridge. The period selected for this work was the fall of the year, when it was usual for the water in Boeuf river to be so low that navigation was impossible, as shown by the testimony of J. W. Green (Record, p. 76). In the fall of 1880, however, unusual and unprecedented rains fell, whereby Boeuf river was made navigable much earlier than usual, and at the same time the work on the completion of the bridge was greatly delayed.

Under these circumstances the plaintiff in error, who was the master and owner of the steamboat **Era No. 10**, came up Boeuf river to this bridge on November 6, 1880, and sought to pass above it, but the pile structure prevented his doing so, and he was unable to pass up the river before December 20, 1880.

Under these circumstances the plaintiff in error brought an action against the defendant in error, in the District Court in and for the parish of Ouachita, and State of Louisiana, for twelve thousand one hundred and eighty-five dollars and thirty-six cents damages (Record, pp. 1 and 2), on February 18, 1881. On April 17, 1882, this

action resulted in a verdict and judgment for the plaintiff, in the sum of one thousand dollars (Record, pp. 13 and 94).

Thereupon both parties appealed to the Supreme Court of Louisiana. That court held that the charter of the Vicksburg, Shreveport and Texas Railroad Company, under which the bridge in question was built, was sufficient authority for the work as it was actually done (Record, p. 100), and that the loss suffered by plaintiff in error was *damnum absque injuria* (Record, p. 101), and dismissed the case at the plaintiff's costs in both courts (Record, p. 98).

Upon motion for a rehearing, the Supreme Court of Louisiana found, as a fact, that Boeuf river, so far as it is navigable, is wholly within the State of Louisiana (Record, p. 102), and refused a rehearing.

The plaintiff thereupon brings this writ of error to this court, and assigns as error that he claims the right to navigate the Boeuf river under certain acts of Congress, which will be further referred to in the course of this brief.

ARGUMENT.

As the Supreme Court of Louisiana has held that the charter of the Vicksburg, Shreveport and Texas Railroad Company is a sufficient justification for the acts complained of in this case, the only question which arises upon the record is the question whether the State of Louisiana could grant permission to obstruct the Boeuf river in the manner in which it was done, or in any manner.

In support of his claim the plaintiff relies upon certain statutes of the United States, which, so far as they are material, are as follows:

An act providing for the final adjustment of claims to lands, and for the sale of the public lands in the territories of Orleans and Louisiana, and to repeal the act passed for the same purpose, and approved February sixteenth, one thousand eight hundred and eleven. Approved March 3d, 1811. 2 Statutes at Large, 666.

Sec. 12. "*And be it further enacted*, That all the navigable rivers and waters in the territories of Orleans and Louisiana shall be and forever remain public highways."

An act to enable the people of the territory of Orleans to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states, and for other purposes. Approved February 20, 1811. 2 Statutes at Large, 642.

Sec. 2. . . . "and that the river Mississippi and the navigable rivers and waters leading into the same, or into the Gulf of Mexico, shall be common highways and forever free, as well to the inhabitants of the said state as to other citizens of the United States, without any tax, duty, impost, or toll therefor, imposed by the said said state."

An act for the admission of the State of Louisiana into the Union, and to extend the laws of the United States to the said state. Approved April 8th, 1812. 2 Statutes at Large, 703.

"Provided, that it shall be taken as a condition upon which the said state is incorporated in the Union, that the river Mississippi, and the navigable rivers and waters leading into the same and into the Gulf of Mexico, shall be common highways, and forever free, as well to the inhabitants of the said state as to the inhabitants of other states and the territories of the United States, without any tax, duty, impost, or toll therefor imposed by the said state."

An act providing for the government of the territory of Missouri, approved June 4, 1812. 2 Statutes at Large, 747.

Sec. 15. . . "The Mississippi and Missouri rivers and the navigable waters flowing into them, and the carrying places between the same, shall be common highways and forever free to the people of the said territory and to the citizens of the United States, without any tax duty or impost therefor."

An act to enable the people of the western part of the Mississippi territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states, approved March 1, 1817. 3 Statutes at Large, 348.

Sec. 4. . . . "and that the river Mississippi and the navigable rivers and waters leading into the same, or into the Gulf of Mexico, shall be common highways, and forever free, as well to the inhabitants of the said state as to other citizens of the United States, without any tax, duty, impost, or toll therefor imposed by the said state."

What figure these statutes may cut in the case we will discuss further on, but assuming for the present the rule, which we regard as incontrovertible, that when a state is admitted into the Union it is admitted on the same footing in all respects as the thirteen original states, and that Congress has no authority, by contract or otherwise, to require any state to enter the Union with any less powers than those possessed by the states forming the national government at the time they adopted the constitution; we shall proceed to ascertain, if possible, what power the original states have to authorize the obstruction of navigable streams within their territory.

In *Wilson* v. *Blackbird Creek Marsh Co.*, 2 Peters, 245, the company had dammed one of the small navigable tidal streams flowing into the Delaware, under the authority of a charter granted by the State of Delaware. The plaintiff in error broke the dam for the purpose of opening the navigation, and on an action of trespass being brought against them raised by his pleas the question of the validity of the charter. The High Court of Errors and Appeals of Delaware held the charter valid and their judgment was affirmed by this court. Marshall, C. J., said (p. 251):

"The act of assembly by which the plaintiffs were authorized to construct their dam shows plainly that this is

one of those many creeks passing through a deep, level marsh adjoining the Delaware, up which the tide flows for some distance. The value of the property on its banks must be enhanced by excluding the water from the marsh and the health of the inhabitants probably improved. Measures calculated to produce these objects, provided they do not come into collision with the powers of the general government are undoubtedly within those which are reserved to the states. But the measure authorized by this act stops a navigable creek, and must be supposed to abridge the rights of those who have been accustomed to use it. But this abridgement, unless it comes in conflict with the constitution or a law of the United States, is an affair between the government of Delaware and its citizens, of which this court can take no cognizance.

"The counsel for the plaintiff in error insists that it comes in conflict with the power of the United States 'to regulate commerce with foreign nations and among the several states.'

"If Congress had passed any act which bore upon the case, any act in execution of the power to regulate commerce, the object of which was to control state legislation over those small navigable creeks into which the tide flows, and which abound throughout the lower country of the Middle and Southern States, we should feel not much difficulty in saying that a state law coming in conflict with such act would be void. But Congress has passed no such act. The repugnancy of the law of Delaware to the constitution is placed entirely on its repugnancy to the power to regulate commerce with foreign nations and among the several states; a power which has not been so exercised as to affect the question."

In *Gilman* v. *Philadelphia*, 3 Wall. 713, the city of Philadelphia was proceeding, under authority of an act of the legislature of Pennsylvania, to build a bridge, without a draw and elevated only about thirty feet above high water, across the Schuylkill river, a navigable tidal river, situated wholly within the State of Pennsylvania.

Swayne, J., says, at page 729:

"It must not be forgotten that bridges, which are connecting parts of turnpikes, streets, and railroads, are means

of commercial transportation, as well as navigable waters, and that the commerce which passes over a bridge may be much greater than would ever be transported on the water it obstructs.

"It is for the municipal power to weigh the considerations which belong to the subject, and to decide which shall be preferred, and how far either shall be made subservient to the other. The states have always exercised this power, and from the nature and objects of the two systems of government, they must always continue to exercise it, subject, however, in all cases to the paramount authority of Congress, whenever the power of the states shall be exerted within the sphere of the commercial power which belongs to the nation."

Coming now to consider whether the statutes upon which the plaintiff in error relies have any bearing upon the question, we come to the case of *Pound* v. *Turck*, 95 U. S. 459. In this case the plaintiffs in error had, under authority of an act of the legislature of Wisconsin, obstructed by a dam the navigation of the Chippewa river, a navigable stream flowing into the Mississippi river, and lying wholly within the State of Wisconsin. This court held that the act of the legislature was a sufficient defense to the action.

Miller, J., says, at page 464:

"The present case falls directly within the principle established by these cases, and aptly illustrates its wisdom. There are within the State of Wisconsin, and perhaps other states, many small streams, navigable for a short distance from their mouths in one of the great rivers of the country by steamboats, but whose greatest value in water-carriage is as outlets to saw-logs, sawed lumber, coal, salt, etc. In order to develop their greatest utility in that regard, it is often essential that dams, booms, piers, etc., should be used, which are substantial obstructions to general navigation, and more or less so to rafts and barges. But to the legislature of the state may be most appropriately confided the authority to authorize these structures where their use will do more good than harm, and to impose such regulations and limitations in their construction and use as will

best reconcile and accommodate the interest of all concerned in the matter. And since the doctrine we have deduced from the cases recognized the right of Congress to interfere and control the matter whenever it may deem it necessary to do so, the exercise of this limited power may all the more safely be confided to the local legislatures."

It will be observed, in examining the opinion in the case last cited, that, although the third section of the act approved August 6, 1846, to enable the people of Wisconsin Territory to form a constitution and state government, and for the admission of such state into the Union, is referred to therein, it is not treated as being in any sense a regulation by Congress, or as affecting the subject.

This section reads:

Sec. 3. "*And be it further enacted*, That the said State of Wisconsin shall have concurrent jurisdiction on the Mississippi, and all other rivers and waters bordering on the said State of Wisconsin, so far as the same shall form a common boundary to said state and any other state or states now or hereafter to be formed or bounded by the same; and said river and waters, and the navigable waters leading into the same, shall be common highways and forever free, as well to the inhabitants of said state as to all other citizens of the United States, without any tax, duty, impost, or toll therefor."

Thus being, so far as material, in exactly the same language as the statutes relied on by the plaintiff in error in the case at bar.

The interpretation contended for by the plaintiff in error appears for the first time to have suggested itself to the ingenuity of counsel in the case of *Escanaba Co.* v. *Chicago*, 107 U. S. 678, in which the appellant, objecting to the regulations made as to the times at which the draw-bridges across the Chicago river and its branches within the city limits were to be opened, relied upon the ordinance of 1787 and the enabling act for the admission

of Illinois as recognizing the same. Yet the court says that the powers of the State of Illinois were in no respect less than those of the State of Delaware.

The court says, speaking through Field, J.:

"But, aside from these considerations, we do not see that the clause of the ordinance upon which reliance is placed materially affects the question before us. That clause contains two provisions: one, that the navigable waters leading into the Mississippi and the St. Lawrence shall be common highways to the inhabitants; and the other, that they shall be forever free to them without any tax, impost, or duty therefor. The navigation of the Illinois river is free, so far as we are informed, from any tax, impost, or duty, and its character as a common highway is not affected by the fact that it is crossed by bridges." Page 689.

And, again, on the question of the authority of the State of Illinois, at page 687:

"Bridges over navigable streams, which are entirely within the limits of a state, are of the latter class. The local authority can better appreciate their necessity, and can better direct the manner in which they shall be used and regulated, than a government at a distance. It is, therefore, a matter of good sense and practical wisdom to leave their control and management with the states, Congress having the power at all times to interfere and supersede their authority whenever they act arbitrarily and to the injury of commerce."

In *Caldwell* v. *Bridge Company*, 113 U. S. 205, the defendant had constructed a bridge over the American river, a navigable water of the United States, wholly within the limits of the State of California. The bridge there erected was about fourteen feet above extreme low water, and five feet above high water, and had no draw. The language of the act admitting California (9 Statutes at Large 453), was as follows:

"And that all the navigable waters within the said state shall be common highways, and forever free, as well to the inhabitants of said state as to the citizens of the United States, without any tax, impost, or duty therefor."

Yet this court held that the bridge, authorized as it was, and as the bridge in the case at bar was by an act of the local legislature, was a lawful structure.

Field, J., says, at page 210:

"The complainant, however, contends that Congress has intervened and expressed its will on this subject by a clause in the act of September 9, 1850, 9 Stat. 452, admitting California as a state into the Union, which declares 'that all the navigable waters within the said state shall be common highways, and forever free, as well to the inhabitants of said state as to the citizens of the United States, without any tax, impost, or duty therefor.' 9 Stat. 453. This declaration is similar to that contained in the ordinance of 1787, for the government of the territory of the United States north-west of the Ohio river, so far as the latter relates to the navigable waters flowing into the Mississippi and the St. Lawrence. And in *Escanaba Co.* v. *Chicago*, we held, with respect to the State of Illinois, that the clause was superseded by her admission into the Union, for she then became entitled to, and possessed of all the rights of domain and sovereignty which belonged to the original states. The language of the resolution admitting her declared, that it was on 'an equal footing with the original states in all respects whatever;' so that, after her admission, she possessed the same power over rivers within her limits that Delaware exercised over Blackbird creek, and Pennsylvania over Schuylkill river.

"The act enabling the people of Wisconsin territory to form a constitution and state government, and for admission into the Union, contains a similar clause. And yet, in *Pound* v. *Turck*, which was before this court at October term, 1877, it was held, that a statute of that state which authorized the erection of a dam across a navigable river within her limits, was not unconstitutional, in the absence of other legislation by Congress bearing on the case. The court does not seem to have considered the question as affected by the clause in the enabling act. That clause is not, it is true, commented on in the opinion, but the section containing it is referred to, and the declaration, that

navigable streams within the state are to be common highways, must have been in the mind of the court. It held, however, that the case was governed by the decisions in the Delaware and Pennsylvania cases, observing that there were in the State of Wisconsin, and other states, many small streams navigable for short distances from their mouths in one of the great rivers of the country, by steamboats, but whose greatest value, in water carriage, was as outlets to saw-logs and lumber, coal and salt, and that, in order to develope their greatest utility in that regard, it was often essential that dams, booms, and piers should be used, which are substantial obstructions to general navigation, and more or less so to rafts and barges; but that to the legislature of the state the authority is most properly confided to authorize these structures where their use will do more good than harm, and to impose such regulations and limitations in their construction and use as will best reconcile and accommodate the interests of all concerned. And the court added that the exercise of this limited power may all the more safely be confided to the local legislatures, as the right of Congress is recognized to interfere and control the matter whenever deemed necessary.

"The clause, therefore, in the act admitting California, quoted above, upon which the complainant relies, must be considered, according to these decisions, as in no way impairing the power which the state could exercise over the subject if the clause had no existence. But independently of this consideration we do not think the clause itself requires the construction which the court below placed upon it, and which counsel urges so earnestly for our consideration. That court held that the clause contains two provisions, one that the navigable waters shall be a common highway, to the inhabitants of the state as well as to citizens of the United States; and the other, that they shall be forever free from any tax, impost, or duty therefor; that these provisions are separate and distinct, and that one is not an adjunct or amplification to the other. Possibly some support is given to that view by language used in the opinion in *Escanaba Co.* v. *Chicago*. In that case all the bridges over the Chicago river had draws for the passage of vessels, and we there held that a bridge constructed with a draw could not be regarded within the ordinance of 1787 as an obstruction to the navigation of the stream. We were not required to express any further opinion as to the meaning of the ordinance. But upon the mature and careful consideration which we have given in this case to the language

of the clause in the act admitting California, we are of opinion that if we treat the clause as divisible into two provisions, they must be construed together as having but one object, namely, to insure a highway equally open to all, without preference to any, and unobstructed by duties or tolls, and thus prevent the use of the navigable streams by private parties, to the exclusion of the public, and the exaction of any toll for their navigation; and that the clause contemplated no other restriction upon the power of the state in authorizing the construction of bridges over them whenever such construction would promote the convenience of the public. The act admitting California declares that she is 'admitted into the Union on an equal footing with the original states in all respects whatever.' She was not, therefore, shorn by the clause as to navigable waters within her limits of any of the powers which the original states possessed over such waters within their limits."

Upon the authorities cited we respectfully submit that the judgment of the Supreme Court of Louisiana should be affirmed.

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